

2010

State of Utah v. Eddie Ray Bozarth, Jr. : Brief of Appellant

Utah Court of Appeals

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_ca3



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Court of Appeals; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

Mark Shurtleff; Attorney General's Office; Scott Garrett; Iron County Attorney; Attorneys for Appellee.

J. Bryan Jackson; J. Bryan Jackson, PC; Attorney for Appellant.

Recommended Citation

Brief of Appellant, *Utah v. Bozarth, Jr.*, No. 20101040 (Utah Court of Appeals, 2010).
https://digitalcommons.law.byu.edu/byu_ca3/2693

This Brief of Appellant is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Court of Appeals Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

J. BRYAN JACKSON, P.C.
J. BRYAN JACKSON USB #4488
Attorney for Defendant/Appellant
95 North Main Street, Suite 25
PO Box 519
Cedar City, Utah 84721-0519
(435) 586-8450

IN THE UTAH COURT OF APPEALS

STATE OF UTAH,

Plaintiff/Appellee,

v.

EDDIE RAY BOZARTH, JR.,

Defendant/Appellant.

Criminal No. 101500328
Appellate Case No. 20101040

ANDERS' BRIEF OF APPELLANT BOZARTH

This is an appeal from the judgment, sentence and commitment filed on or about the 14th day of December, 2010, by the Fifth Judicial District Court of Iron County, State of Utah, the Honorable G. Michael Westfall presiding, and counsel for Appellant filing an Anders' Brief in compliance with State v. Wells, 2000 UT App. 304, 13 P.3d 1056. The Appellant is incarcerated at the Utah State Prison.

MARK SHURTLEFF
ATTORNEY GENERAL'S OFFICE
PO Box 142320
Salt Lake City, UT 84114-2320
(801) 366-0260
Attorneys for Plaintiff/Appellee

J. BRYAN JACKSON, (4488)
J. BRYAN JACKSON, P.C.
95 North Main Street, Suite 25
Post Office Box 519
Cedar City, Utah 84721-0519
(435) 586-8450
Attorney for Defendant/Appellant Bozarth

SCOTT GARRETT (8687)
IRON COUNTY ATTORNEY
82 North 100 East, Suite 201
Cedar City, Utah 84720
(435) 865-5310
Attorney for Plaintiff/Appellee

FILED
UTAH APPELLATE COURTS

MAR 21 2012

J. BRYAN JACKSON, P.C.
J. BRYAN JACKSON USB #4488
Attorney for Defendant/Appellant
95 North Main Street, Suite 25
PO Box 519
Cedar City, Utah 84721-0519
(435) 586-8450

IN THE UTAH COURT OF APPEALS

STATE OF UTAH,

Plaintiff/Appellee,

v.

EDDIE RAY BOZARTH, JR.,

Defendant/Appellant.

Criminal No. 101500328
Appellate Case No. 20101040

ANDERS' BRIEF OF APPELLANT BOZARTH

This is an appeal from the judgment, sentence and commitment filed on or about the 14th day of December, 2010, by the Fifth Judicial District Court of Iron County, State of Utah, the Honorable G. Michael Westfall presiding, and counsel for Appellant filing an Anders' Brief in compliance with State v. Wells, 2000 UT App. 304, 13 P.3d 1056. The Appellant is incarcerated at the Utah State Prison.

MARK SHURTLEFF
ATTORNEY GENERAL'S OFFICE
PO Box 142320
Salt Lake City, UT 84114-2320
(801) 366-0260
Attorneys for Plaintiff/Appellee

J. BRYAN JACKSON, (4488)
J. BRYAN JACKSON, P.C.
95 North Main Street, Suite 25
Post Office Box 519
Cedar City, Utah 84721-0519
(435) 586-8450
Attorney for Defendant/Appellant Bozarth

SCOTT GARRETT (8687)
IRON COUNTY ATTORNEY
82 North 100 East, Suite 201
Cedar City, Utah 84720
(435) 865-5310
Attorney for Plaintiff/Appellee

TABLE OF CONTENTS

JURISDICTION	1
ISSUES PRESENTED FOR REVIEW	1
ISSUE NO. 1.....	1
ISSUE NO. 2.....	1
ISSUE NO. 3.....	1
ISSUE NO. 4.....	1
STANDARD OF REVIEW	2
STATUTORY PROVISIONS	4
STATEMENT OF THE CASE.....	4
STATEMENT OF FACTS	6
SUMMARY OF ARGUMENTS.....	9
ARGUMENT.....	11
A. Submission of Anders' Brief pursuant to the requirements of <u>State v. Wells</u> , 2000 UT App. 304, 13 P.3d 1056. (Pg. 11)	
B. The preservation rule and plain error doctrine limit review on appeal. (Pg. 12)	
a. Point No. 1- The record establishes that the plea of Appellant to count four, use or possession of a firearm by a restricted person, complied with Rule 11, Utah Rules of Criminal Procedure and there is nothing in the record to suggest that the Appellant intended to withdraw his plea prior to sentencing. (Pg. 13)	
b. Point No. 2- The evidence supports the jury's verdict on the remaining charges. (Pg. 14)	
c. Point No. 3- The record reveals no rulings by the court at trial or before which prejudice the Appellant and sentencing the charges to run concurrently was within its sound discretion. (Pg. 15)	
d. Point No. 4- Appellant did not receive ineffective assistance of counsel at trial. (Pg. 17)	
CONCLUSION.....	19
CERTIFICATE OF MAILING.....	20
ADDENDUM.....	21
EXHIBIT A: Statutory Provisions and Rules.	
EXHIBIT B: Selected pages from the trial transcript and in the record.	
EXHIBIT C: Presentence Investigation Report with update.	
EXHIBIT D: Utah Court of Appeals forward of Appellant's response to Docketing Statement to Counsel.	

TABLE OF AUTHORITIES

STATUTES AND RULES

Utah Code Annotated, § 78A-4-103(1)(2)(e) (1953, as amended)	1, 4
Utah Rules of Criminal Procedure, Rule 11	2, 4, 10, 13
Utah Code Annotated, § 41-6a-1401 (1953, as amended)	4
Utah Code Annotated, § 58-37-8(2)(a)(i) (1953, as amended)	4
Utah Code Annotated, § 76-5-102 (1953, as amended)	4
Utah Code Annotated, § 76-5-103 (1953, as amended)	4
Utah Code Annotated, § 76-6-203 (1953, as amended)	4
Utah Code Annotated, § 77-13-6 (1953, as amended)	4, 13

CASES

<u>State v. Ramirez</u> , 817 P.2d 774	2
<u>State v. Rhodes</u> , 818 P.2d 1048 (Utah App 1991)	2
<u>State v. Gibbons</u> , 770 P.2d 1133 (Utah 1989)	2
<u>State v. Gerrard</u> , 574 P.2d 885 (Utah 1978)	2
<u>State v. Kay</u> , 717 P.2d 1294, 1304 (Utah 1986)	2, 14
<u>State v. Ostler</u> , 2000 UT App 28	2
<u>State v. Thurman</u> , 911 P.2d 371 (Utah 1996)	2
<u>State v. Valsilacupulous</u> , 756 P.2d 92 (Utah App) cert. denied, 765 P.2d 1278 (Utah 1988)	2
<u>State v. Cheney</u> , 1999 UT App 309.	2
<u>State v. Brown</u> , 948 P.2d 337, 343 (Utah 1997)	2
<u>State v. Wood</u> , 868 P.2d 70, 87 (Utah 1993)	2
<u>State v. Johnson</u> , 821 P.2d 1150, 1156 (Utah 1991)	3
<u>State v. Comer</u> , 2002 UT App. 219 ¶ 11, 51 P.3d 55	3
<u>State v. Whittle</u> , 1999 UT 96, ¶ 20, 989 P.2d 52), <u>cert. denied</u> , 59 P.3d 603 (Utah 2002)	3
<u>State v. Quinonez-Gaiton</u> , 2002 UT App 273, ¶10, 54 P.3d 139.	3
<u>State v. Clark</u> , 2009 UT App 252, ¶10	3
<u>State v. Tarrats</u> , 2005 UT 50, ¶16, 122 P.3d 581.	3
<u>State v. Smith</u> , 842 P.2d 908 (Utah 1992)	3, 16
<u>State v. Howell</u> , 707 P.2d 115 (Utah 1985)	3, 16
<u>State v. Hales</u> , 2007 UT 14 at ¶68	3, 17
<u>Strickland v. Washington</u> , 466 U.S. 668 (1984)	3, 17
<u>State v. Wells</u> , 2000 Utah App. 304, 13 P.3d 1056	9, 11, 19
<u>Anders v. California</u> , 386 U.S. 7838, 87 S.Ct. 1397, 1811 L.Ed.2d 493 (1967)	9, 11, 18, 19, 20
<u>State v. Holgate</u> , 2000 UT 74, ¶11, 10 P.3d 346.	12
<u>Monson v. Carver</u> , 928 P.2d 1017, 1022 (Utah 1996)	12
<u>State v. Irwin</u> , 924 P.2d 5, 7 (UT App 1996)	12
<u>State v. Powell</u> , 872 P.2d 1027, 1029 (Utah 1994)	12
<u>State v. Sousa</u> , 846 P.2d 1313, 1322 (Utah App 1993)	12

<u>State v. Kocher</u> , 1999 UT App 352, ¶4.	12
<u>State v. Dean</u> , 2004 UT 63.	13
<u>State v. Hittle</u> , 2004 UT 646.	13
<u>State v. Gablin</u> , 2000 UT 44, at ¶9, 1 P.3d 1108.	13
<u>Gablin</u> , 2000 UT a, ¶17, n. 2, 1 P.3d 1108.	14
<u>State v. Chevre</u> , 2000 UT App 006.	17
<u>State v. Hansen</u> , 837 P.2d 987, 988 (Utah App 1992)	17
<u>State v. Montoga</u> , 937 P.2d 145, 149-50 (Utah App 1997)	17
<u>New York v. Belton</u> , 453 U.S. 454, 460, 101 S. Ct. 2860, 2864 (1981)	17

IN THE UTAH COURT OF APPEALS

STATE OF UTAH, Plaintiff/Appellee, v. EDDIE RAY BOZARTH, JR., Defendant/Appellant.	<u>APPELLANT IS INCARCERATED</u> Criminal No. 101500328 Appellate Case No. 20101040
--	--

JURISDICTION

This appeal comes under the jurisdiction of the Utah Court of Appeals pursuant to Utah Code Annotated, §78A-4-103 (1)(2)(e) (1953, as amended) in that it involves an appeal from a court of record in a criminal case which does not involve a conviction of a capital or first degree felony.

ISSUES PRESENTED FOR APPEAL

Issues that were considered for appeal in this case by counsel for Appellant include the following:

ISSUE No. 1: Whether or not Appellant is entitled to withdraw his plea under the circumstances?

ISSUE No. 2: Whether or not there was sufficient evidence presented at trial to establish that a crime had been committed or identified the Appellant as the one involved in the commission thereof?

ISSUE No. 3: Whether or not the trial court erred or abused its discretion in ruling on pretrial or trial motions, objections or in sentencing the Appellant?

ISSUE No. 4: Whether or not Appellant received ineffective assistance of counsel at

trial?

STANDARD OF REVIEW

The standard of review is believed to be one of “correctness” as it applies to questions of law and the interpretation of statute. It is a standard of “clearly erroneous” as it applies to questions of fact. See State v. Ramirez, 817 P.2d 774 and State v. Rhodes, 818 P.2d 1048 (Utah App 1991); see also State v. Gibbons, 770 P.2d 1133 (Utah 1989) and State v. Gerrard, 574 P.2d 885 (Utah 1978).

Plea agreements are binding on the parties and the court once entered and accepted. See State v. Kay, 717 P.2d 1294, 1304 (Utah 1986). The procedural requirements of Rule 11, Utah Rules of Criminal Procedure, must be met. See State v. Ostler, 2000 UT App 28. See also State v. Gibbons, 740 P.2d 1309 (Utah 1987). The Court of Appeals will review a trial court’s denial of a motion to withdraw a guilty plea under an abuse of discretion standard; the trial court’s findings of fact made in conjunction with its discretion will not be set aside unless they are clearly erroneous. See State v. Thurman, 911 P.2d 371 (Utah 1996). It is an abuse of discretion to deny a motion to withdraw plea if the defendant did not have full knowledge and understanding of the circumstances of his plea. See State v. Valsilacupulous, 756 P.2d 92 (Utah App), cert. denied, 765 P.2d 1278 (Utah 1988).

In reviewing an insufficiency of evidence claim, this Court reviews the evidence and all inferences which may be reasonably drawn from it in the light most favorable to the jury’s verdict. See State v. Cheney, 1999 UT App 309; see also State v. Brown, 948 P.2d 337, 343 (Utah 1997). This Court will not weigh evidence or assess witness credibility but will assume that the jury believed the evidence and those inferences that support its verdict. See State v. Wood, 868 P.2d 70, 87 (Utah 1993). Evidence is insufficient only when, so viewed, it is

sufficiently inconclusive or inherently improbable that reasonable minds must have a reasonable doubt that the defendant committed the charged crime. See State v. Johnson, 821 P.2d 1150, 1156 (Utah 1991).

The trial court abuses its discretion if it acts unreasonably. See State v. Comer, 2002 UT App. 219 at ¶11, 51 P.3d 55 (quoting State v. Whittle, 1999 UT 96, at ¶20, 989 P.2d 52) cert. denied, 59 P.3d 603 (Utah 2002)). The Utah Court of Appeals reviews a trial court's interpretation of the rules of evidence for correctness according no particular deference. State v. Quinonez-Gaiton, 2002 UT App 273, ¶10, 54 P.3d 139. It examines the trial court's underlying evidentiary determinations for abuse of discretion. State v. Clark, 2009 UT App 252, ¶10; see also State v. Tarrats, 2005 UT 50, ¶16, 122 P.3d 581.

Sentencing, being indeterminate in the State of Utah, falls to the substantial discretion of the trial court judge. See State v. Smith, 842 P.2d 908 (Utah 1992). Moreover, the exercise of that discretion is not unlimited and it may not be exercised on the basis of unreliable information. See State v. Howell, 707 P.2d 115 (Utah 1985).

Regarding a claim for ineffective assistance of counsel, the right to counsel embodied in the Sixth Amendment of the United States Constitution is a right to effective assistance. A defendant is deprived of this right when his counsel's conduct so undermines the proper function of the adversarial process that the proceedings cannot be relied on in having produced a just result. Ineffective assistance of counsel is proven when the performance is so deficient as to fall below an objective standard of reasonableness and except for such deficient performance there is a reasonable probability that the outcome at trial would have been different. State v. Hales, 2007 UT 14 at ¶68; see also Strickland v. Washington, 466 U.S. 668 (1984).

STATUTORY PROVISIONS

The statutory provisions and rules which Appellant believes to be applicable and maybe even decisive are as follows:

Utah Code Annotated, §78A-4-103 (1)(2)(e) (1953, as amended)

Utah Rules of Criminal Procedure, Rule 11;

Utah Code Annotated §41-6a-1401 (1953, as amended);

Utah Code Annotated §58-37-8(2)(a)(i) (1953, as amended);

Utah Code Annotated §76-5-102 (1953, as amended);

Utah Code Annotated §76-5-103 (1953, as amended);

Utah Code Annotated §76-6-203 (1953, as amended); and

Utah Code Annotated §77-13-6 (1953, as amended).

True and correct photocopies of the statutory provisions are attached hereto, marked as Appellant's Exhibit "A" and the same are incorporated herein by this reference as part of the addendum.

STATEMENT OF THE CASE

NATURE of the CASE: This case involves the Appellant having been accused of entering the residence of the victim with a loaded shotgun to settle a debt. The weapon misfired and a struggle ensued. Law enforcement was called and arrived as the parties were still struggling on the victim's living room floor. The Appellant was arrested and his vehicle was impounded and searched. An information was filed charging the Appellant with aggravated burglary, a first degree felony, two counts of aggravated assault, each a third degree felony, possession or use of a firearm by a restricted person, a third degree felony, possession of a controlled substance, a third degree felony, possession of drug paraphernalia, a class B misdemeanor and unlawful parking in

a roadway, a class C misdemeanor.

COURSE of PROCEEDINGS and DISPOSITION: The Appellant was arrested on the day of the incident, Memorial Day weekend, 2010. He retained counsel in June and waived the preliminary hearing, see the hearing transcript of June 10, 2010, at page 9, with the record but unmarked. The Appellant plead guilty to count four, possession or use of a firearm by a restricted person, a third degree felony. Id; see also the record at 27. A stipulated motion was made to continue sentencing until after trial on the remaining charges. See the record at 55. The matter came on for status in August and again in October, 2010, going forward as a one day jury trial on the 28th day of the latter month. The jury returned a verdict of not guilty to the charge of aggravated burglary, a first degree felony, and guilty to lesser included offenses to counts two and three and the remaining charges. The matter was continued to the 14th day of December, 2010, for sentencing. Judgment, Sentence and Commitment was filed the same day, sentencing the Appellant to 0-5 years in the Utah State Prison on count four, possession or use of a firearm by a restricted person, a third degree felony and possession of a controlled substance, a third degree felony; a year in the county jail for each reduced charge of threatening with or using a dangerous weapon in a fight or quarrel; six months for possession of drug paraphernalia and; ninety days for unlawful parking. The sentences imposed were ordered to be served concurrently in the Utah State Prison, restitution to remain open for 120 days and the Appellant credited for 187 days time served. Fines of \$500.00 were ordered for each felony conviction and a \$33.00 court security fee was ordered for each charge. No motion to withdraw plea was made at sentencing or prior thereto. However, the Appellant filed a notice of appeal which was not specific as to the grounds on the 22nd day of December, 2010. See the record at 140. Counsel for Appellant on appeal was appointed at the end of March, 2011.

STATEMENT OF FACTS

1. On or about the 30th day of May, 2010, the Memorial Day weekend, dispatch received a report of a man in possession of a rifle who had intruded into the home and upon the premises of Richard Lee Kalles at 304 North 100 East, Cedar City, Iron County, Utah. Officers from the Cedar City Police Department, Medina and Suttlemeyer, were the first to respond and as they approached they observed a female in the center of the street waiving her arms. See trial transcript at page 29, in the record at 159. A true and correct photocopy of the same is attached hereto as Exhibit "B" of the Addendum and incorporated herein by this reference. The female was Mr. Kalles' girlfriend, Margaret Vose, and she was fairly upset, emotional and alarmed. Id. She indicated that the officers needed to get in the house right away. Id at 30.

2. The officers walked through the front door which was already open and observed two male subjects, one lying on top of the other. Id. The Appellant was being restrained by Mr. Kalles and a few feet from where the two persons were struggling there lay a .410 gauge shotgun on the floor with the breach of it open. Id at 31.

3. The Appellant was advised of his rights per miranda and indicated that he did not want to speak with an officer. No further questions were asked of him and he was placed in a patrol car. Id at 37 and 38.

4. Mr. Kalles, the resident of the house, informed law enforcement that while he was in the kitchen with his girlfriend, making potato salad in preparation for a barbeque, they suddenly heard a large boom at his front door. Id at 49. He walked into the front formal dining room area and observed the Appellant standing there with a gun pointed at him who just started immediately pulling the trigger. As his girlfriend came around the corner, the Appellant pointed the gun at her and Mr. Kalles grabbed the end of it, forced it to the ceiling and wrestled with the

Appellant until he got it away, holding him down until the police arrived. Id at 50.

5. Mr. Kalles claimed that the Appellant's girlfriend, Kimberly Bailey, owed him \$200.00 which he had loaned to her some time previously and needed to have repaid and harsh words had been exchanged between them in his attempt to collect the debt. Id at 62.

6. Ms. Bailey had a different version and testified at trial that telephone communications and harassing voicemails, including threats to her family, had been instigated by Mr. Kalles and that the money she owed was only \$25.00 and was for drugs she had purchased from him. Id at 165 and 170.

7. The rifle was a Jed Williams, Sears, Robuck & Company .410 gauge shotgun, which was found with a live round lodged in the chamber and required pliers and a pocket knife to extract. Appellant testified at trial that the gun did not work and was only being used as a prop in his effort to reason with Mr. Kalles about payment of the drug debt. Id at 216-218. However, law enforcement tested the gun just prior to trial and determined that it functioned properly once the jammed round had been removed. Id at 121 and 122.

8. When Appellant arrived at Mr. Kalles' home, he left his car parked in front of a fire hydrant with the engine running and stereo blasting. When he was arrested, officers impounded the car and did an inventory search. Id at 122. On the front seat, there was a small zip lock baggie in plain view which contained a white crystalline substance the officers believed to be methamphetamine. They also found a light bulb that had been modified to be used as a methamphetamine pipe, id at 149, and shotgun shells that had been modified, reloaded with ball bearings. Id at 133.

9. The initial appearance was held on the 3rd day of June, 2010, the trial court temporarily appointed counsel but retained counsel appeared thereafter and Appellant waived the preliminary

hearing and plead not guilty to all counts except count four, possession or use of a firearm by a restricted person, a third degree felony. See the record at 27. Yet, sentencing was delayed until after trial on the remaining charges based upon the stipulation of the parties. See the record at 55. A one day jury trial was held on the 28th day of October, 2010, the jury returning a verdict of not guilty to count 1, aggravated burglary, a first degree felony, and guilty to the reduced charges of threatening with or using a dangerous weapon in a fight or quarrel, each a class A misdemeanor and the remaining counts which included possession or use of a controlled substance, a third degree felony, possession of drug paraphernalia, a class B misdemeanor, and unlawful parking, a class C misdemeanor. There were no pretrial motions and the trial court's rulings upon admissibility of evidence do not appear to have prejudiced the defense although Appellant claimed at trial that the inventory search of his vehicle after he was arrested was illegal and bogus. Id at 239.

10. The matter was continued to the 14th day of December, 2010, for the preparation of a presentence investigation report prior to sentencing. No motion was made in writing or at sentencing by Appellant to withdraw his plea of guilty to count four. On that date, the Appellant was sentenced per statute to the Utah State Prison, the trial court's Judgment, Sentence and Commitment filed the same day. See the record at 134. The presentence investigation report appears to have not been made a part of the record though the minutes reflect that errors were corrected in it prior to sentencing. See the record at 131. A presentence report was completed in July, 2010, regarding count four, possession or use of a firearm by a restricted person, a third degree felony. Appellant scored twelve on the General Matrix Criminal History Assessment revealing at least four prior felonies and a series of misdemeanors and thereafter there was prepared a presentence memorandum update in December, 2010, that changed the total score to

14 of the General Matrix Criminal History Assessment, recommending prison but accounting for 187 days of jail credit. A psychological assessment conducted by Curtis Hill concluded that the Appellant is intellectually bright and cares for others but lacks social grace and skill, diagnosing him with ADHD, possibly a post traumatic stress disorder, lacking essential insight as to how current events may have been connected to past events and lacking skill to cope with subsequent feelings, believing that an overreaction was better than a lack of action. See Appellant's Exhibit "C" attached hereto as part of the Addendum and incorporated herein by this reference.

Appellant's sentences were run concurrent with \$500.00 fines ordered for each felony and a court security fee of \$33.00 ordered for each offense. Appellant was given credit for the 187 days served in the Iron County Jail.

11. The Appellant filed his own notice of appeal filed on or about the 22nd day of December, 2010. See the record at 140. He gives notice of intent to appeal but is otherwise not specific as to identifying his reasons. Appellant was appointed counsel, his trial counsel having withdrawn, on or about the 31st of March, 2011.¹

SUMMARY OF ARGUMENTS

A.

Counsel for Appellant submits an Anders' Brief pursuant to the requirements of State v. Wells, 2000 UT App 304, 13 P.3d 1056, on the grounds and for the reasons set forth hereafter.

B.

The preservation rule and plain error doctrine limit review on appeal. The reviewable

¹ Appellant filed three separate civil actions naming the Iron County Jail, case number 100501003, the victims, Richard Lee Kalles and his girlfriend, Margaret Vose, case number 100501011, and the Utah Attorney General, Mark L. Shurtleff et al, case number 100501145, which were dismissed by the same district court judge and appeal taken and the trial court's ruling affirmed by dismissing each filing as untimely per curium in case numbers 20110407-CA, 20110489-CA and 20110556, respectively.

exceptions include ineffective assistance of counsel, obvious error and claims of manifest injustice. A claim for insufficiency of evidence is also limited and requires marshalling with this Court granting broad discretion to the fact finder. To establish plain error under the doctrine, the error must exist, be obvious to the trial court and harmful. In other words, confidence in the verdict is undermined.

POINT NO. 1

The plea of Appellant to count four complied with Rule 11, Utah Rules of Criminal Procedure and there is nothing in the record suggesting that Appellant intended to withdraw his plea prior to sentencing. No motion was made either before or after sentencing. The Appellant's notice to appeal makes no reference to withdrawing his plea. The record does not reveal obvious error or harm with a reasonable likelihood of a more favorable outcome. Plea agreements are binding on both parties and the trial court once entered and accepted and cannot be withdrawn without a showing of good cause.

POINT NO. 2

In this case, the evidence supports the verdict. The jury returned a verdict of not guilty to the more serious offenses but supports the conviction to the lesser offenses and remaining charges. The search of the vehicle was not challenged since a motion to suppress was not filed and in light of Appellant parking in front of a fire hydrant it required impound or was subject to an inventory search or search incident to arrest. Notwithstanding, the Appellant in testifying admits to it being his vehicle and him driving to the victim's home, entering with a firearm.

POINT NO. 3

No rulings by the trial court prejudice the Appellant and sentencing concurrently was within its sound discretion. The rulings at trial are consistent with the Utah Rules of Evidence

and did not play a significant role in the presentation of evidence, perhaps slightly favoring the Appellant. No exception was made to jury instructions and those provided appear appropriate with no showing of manifest injustice. Sentencing was consistent with that which was recommended and favored Appellant by running all counts concurrently.

POINT NO. 4

Appellant's representation at trial was effective, having orchestrated a defense to return a verdict of not guilty on count one and guilty on reduced charges on counts two and three. Notwithstanding, counsel's failure to bring a motion to suppress or to withdraw plea, the level of representation exceeds an objective standard of reasonableness. The powers of persuasion are not necessarily quantifiable but are evident from the results, particularly for an Iron County jury. Appellant benefitted by such efforts and it is unlikely to assume that the verdict would have been more favorable by approaching the case differently.

ARGUMENT

A.

SUBMISSION OF ANDERS' BRIEF PURSUANT TO THE REQUIREMENTS OF STATE V. WELLS, 2000 UTAH APP 304, 13 P.3D 1056.

Counsel for Appellant files this brief after the manner of Anders v. California, 386 U.S. 783, 87 S.Ct. 1397, 1811 L.Ed.2d 493 (1967), having furnished to this Court the details which counsel submits should be considered in the record that might arguably support an appeal. Counsel submits that the certificate of mailing will confirm that a copy of this brief was furnished to Appellant by mail after Appellant had the opportunity to discuss, review and provide arguments or commentary.²

² Counsel for Appellant made several attempts to have Appellant contact him from the Utah State Prison. Since his counsel is in Cedar City and Appellant was being housed at Draper no contract visit was made. Appellant was made aware of counsel's intention to file an Anders' Brief when filing the docketing statement, which Appellant responded to by directing his complaints to the Court of Appeals. This was forwarded to said counsel and not made a part of the

B.
THE PRESERVATION RULE AND PLAIN ERROR DOCTRINE LIMIT REVIEW ON APPEAL

This Court will not consider issues that defense counsel fails to raise at trial and this includes constitutional questions. See State v. Holgate, 2000 UT 74, ¶11, 10 P.3d 346. See also Monson v. Carver, 928 P.2d 1017, 1022 (Utah 1996). The exceptions include plain error and ineffective assistance of counsel. See State v. Irwin, 924 P.2d 5, 7 (UT App 1996). Unless a party objects to an instruction or fails to give one, the instruction may not be assigned to error except to avoid manifest injustice. See State v. Powell, 872 P.2d 1027, 1029 (Utah 1994). This Court's review also limits a claim for insufficiency of evidence. The Court grants broad deference to the fact finder. Therefore, its power to review a jury verdict challenged on grounds of insufficient evidence is qualified. See State v. Sousa, 846 P.2d 1313, 1322 (Utah App 1993). This Court reviews the evidence and all inferences drawn from it in a light most favorable to the jury's verdict and reverses only if the evidence is so inconclusive or so inherently improbable that reasonable minds must have entertained a reasonable doubt that the defendant committed the crime of which he was convicted. See State v. Kocher, 1999 UT App 352, ¶4. To establish the existence of plain error and obtain relief from that which was not properly objected to, the Appellant must show the following: (i) an error exists; (ii) the error was obvious to the trial court; and (iii) the error is harmful, i.e., absent the error, there is reasonable likelihood of a more favorable outcome for the Appellant. Phrased differently, confidence in the verdict is undermined. See Powell, 872 P.2d at 1029 (1994).

///

record, see Appellant's Exhibit "D" attached hereto as part of the addendum and incorporated herein by this reference. Notwithstanding, the Appellant's assertions, there have been no inquiries made to appointed counsel, there are no conflicts that counsel is aware of and the content of the letter is not helpful in identifying issues to consider on

POINT NO. 1

THE RECORD ESTABLISHES THAT THE PLEA OF APPELLANT TO COUNT FOUR, USE OR POSSESSION OF A FIREARM BY A RESTRICTED PERSON, COMPLIED WITH RULE 11, UTAH RULES OF CRIMINAL PROCEDURE AND THERE IS NOTHING IN THE RECORD TO SUGGEST THAT THE APPELLANT INTENDED TO WITHDRAW HIS PLEA PRIOR TO SENTENCING.

Utah Code Annotated, §77-13-6 (1953, as amended), provides that a request to withdraw a plea of guilty shall be made by motion before sentence is announced. In this case, Appellant entered a guilty plea on the 10th day of June, 2010. There was no written plea agreement. Oral colloquy with the trial court at the time of entry of the plea sufficiently, however, covers the requirements of the rule. See the hearing of June 10, 2010, pages 10-17, unnumbered in the record, true and complete photocopies thereof attached hereto are marked as Appellant's Exhibit "B" of the Addendum and incorporated herein by this reference. No written or oral motion was made to withdraw the plea prior to sentencing. Therefore, Appellant must qualify through what is manifested as plain error from the record. See State v. Dean, 2004 UT 63; see also State v. Hittle, 2004 UT 646. In this case, the record does not reveal any such error that is obvious to the trial court or harmful with a reasonable likelihood of a more favorable outcome if brought to the trial court's attention. Moreover, the Appellant's request to appeal his case makes no reference and gives no indication of attempting to withdraw his plea before or after sentencing. That is to say, there is nothing in the record which clearly requests or moves to withdraw Appellant's plea to count four under the circumstances of this case. The guilty plea entered, the record absent of anything that could be inferred or implied as a motion to withdraw, clearly establishes no basis to allow for such as plain error. See State v. Gablin, 2000 UT 44, at ¶9, 1 P.3d 1108. Without a showing of good cause, the filing of a timely motion to withdraw, plea agreements are binding on

appeal.

the parties and the trial court once the plea is entered and accepted. See State v. Kay, 717 P.2d 1294, 1304 (Utah 1986).

POINT NO. 2

THE EVIDENCE SUPPORTS THE JURY'S VERDICT ON THE REMAINING CHARGES.

The case is an interesting one in light of the fact that the jury returned a verdict of not guilty as to aggravated burglary, a first degree felony, and guilty on reduced offenses of the use of a firearm in a quarrel and the remaining charges. Nevertheless, to prevail, the Appellant must marshal the evidence that supports the verdict and thereafter show that even when viewing the evidence in a light most favorable to it, it is insufficient to support conviction. See Gablin, 2000 UT a, ¶17, n. 2, 1 P.3d 1108. In doing so in this case, it appears that the jury believed the Appellant when he testified and asserted that the loaded shotgun he carried into the home was as a prop and his reason for being there was not to assault the victim or commit any additional crime. Nevertheless, regarding the aggravated assaults, the use of the shotgun was sufficient to pose a threat in a fight or quarrel, considered sufficient for conviction as lesser included uncharged offenses to counts two and three. The uncharged lesser included offenses would have been submitted by Appellant for consideration though the trial transcript does not reveal discussion in chambers in preparation of the jury instructions. See trial transcript at page 242, in the record at 159.

While Appellant argues that the search of his vehicle was illegal or bogus, the record reveals no pretrial motion to suppress or limit evidence obtained from the inventory search at the time of arrest. Testimony of Officer Limoreaux was sufficient to determine that the residue in the

plastic bag found in Appellant's vehicle contained methamphetamine. See the trial transcript at page 154, in the record at 159. His testimony together with that of Officer Melissa Fuller were sufficient to establish that the modified light bulb found in Appellant's vehicle was paraphernalia for the smoking of methamphetamine. Testimony of Officer Justin Chappell together with State's Exhibits 15, 16 and 17 were sufficient to show that the vehicle was parked in front of a fire hydrant and in identifying the contents of the vehicle. Moreover, the Appellant admitted to driving to Mr. Kalles' residence, see the trial transcript at page 216, in the record at 159, parking the car, id at 218, taking the gun, id, and having an altercation with him in his home, id at 220-222. Appellant also admitted having committed prior felonies. Id at 225. In short, the evidence was sufficient to allow the jury to make the findings it did in returning its verdict. In fact, in light of the circumstance incident to the arrest, it is difficult to see how a pretrial ruling made by the trial court would have suppressed such evidence or the action by either counsel in any way prejudiced the Appellant. It certainly cannot be said that the Appellant in this case was deprived of the effective assistance of counsel or that the proceedings could not be relied upon in having produced an unjust verdict which by all rights favored the Appellant.

POINT NO. 3

THE RECORD REVEALS NO RULINGS BY THE COURT AT TRIAL OR BEFORE WHICH PREJUDICE THE APPELLANT AND SENTENCING THE CHARGES TO RUN CONCURRENTLY WAS WITHIN ITS SOUND DISCRETION.

In this case, there were no pretrial motions except to stipulate to continuing sentencing on count four, use or possession of a firearm by a restricted person, a third degree felony, until after trial which the trial court allowed. The few objections made during trial appear to have been decided consistently with the Utah Rules of Evidence and if anything slightly favor Appellant

and show that he benefitted from the inclusion of uncharged lesser included offenses to counts two and three. No exception was taken to the jury instructions given even though the trial court inquired as to objections. See trial transcript at pages 8 and 242, in the record at 159. There was no motion made to dismiss at the end of the State's case or after the verdict was returned. Neither side requested to poll the jury. See the trial transcript at page 297 and 298, in the record at 159. Nevertheless, there is nothing in the record that reveals itself as obvious or harmful to qualify under plain error exception review.

Before sentencing, a presentence investigation report was prepared which involved updating the one made in July and reaffirming its recommendation of prison. Notwithstanding, the trial court ran all counts concurrent and there is nothing that reveals itself in the record or the presentence investigation report as amended that in exercising such judgment it abused its discretion. Sentencing, being indeterminate in the State of Utah, falls to the substantial discretion of the trial court judge. See State v. Smith, 842 P.2d 908 (Utah 1992). However, the exercise of that discretion is not unlimited and it may not be exercised on the basis of unreliable information. See State v. Howell, 707 P.2d 115 (Utah 1985). The record does reveal that corrections were made to the presentence investigation report, see the record at 131, and that the trial court judge accounted for and reviewed a psychological evaluation before sentencing. See Appellant's Exhibit "C" of the Addendum and incorporated herein by this reference. Also, the trial court imposed fines and fees less than what one might expect given the nature of the charges upon which the Appellant was convicted or plead guilty and he additionally was credited more than a half a year as time served. The record does not reveal that the action taken by the trial court was an abuse of its discretion.

POINT NO. 4

APPELLANT DID NOT RECEIVE INEFFECTIVE ASSISTANCE OF COUNSEL AT TRIAL.

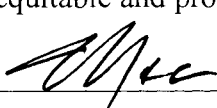
The right to counsel embodied in the Sixth Amendment of the United States Constitution is a right to the effective assistance of counsel. A defendant is deprived of this right when his counsel's conduct so undermines the proper function of the adversarial process that the proceedings cannot be relied on in having produced a just result. Ineffective assistance of counsel is proven when performance is so deficient as to fall below the objective standard of reasonableness and except for such deficient performance there is a reasonable probability that the outcome of the trial would have been different. See State v. Hales, 2007 UT 14 at ¶68; see also Strickland v. Washington, 766 U.S. 668 (1984). While counsel for Appellant did not file a pretrial motion to suppress or limit evidence obtained from the inventory search by law enforcement at the time of the arrest, it is unlikely that such a motion would have prevailed. It has been a longstanding policy and procedure of law enforcement to inventory the contents of a vehicle impounded at the time of arrest. This Court in State v. Chevre, 2000 UT App 006, affirmed the trial court's determination that an inventory search and a search incident to arrest was proper and did not violate the Fourth Amendment. See also State v. Hansen, 837 P.2d 987, 988 (Utah App 1992) and State v. Montoga, 937 P.2d 145, 149-50 (Utah App 1997). This is consistent with national standards. See New York v. Belton, 453 U.S. 454, 460, 101 S. Ct. 2860, 2864 (1981). In this case, the vehicle needed to be impounded in part because it needed to be moved having been parked illegally in front of a fire hydrant. Likewise, counsel for Appellant did not move to withdraw Appellant's plea of guilty to count 4, possession or use of a firearm by a

restricted person, a third degree felony, or move for directed verdict or motion for new trial because Appellant ultimately prevailed on the more significant charges. To say that effective assistance was rendered in behalf of the Appellant is an understatement. In fact, this attorney's review of the record finds the verdict somewhat surprising in light of the evidence that was presented and therefore must assume that the favorable result was due to the powers of persuasion by Appellant's counsel during the course of proceedings which are reflected to some degree in how the court ruled, the way each witness was handled or interrogated, cross examination of the State's witnesses and argument made at trial and sentencing. The strongest indicator of them all is in the form of the jury verdict. Without putting too fine a point on the matter, counsel for Appellant on appeal believes that trial counsel's assistance was more than effective, it was extraordinary. It did not fall below the objective standard of reasonableness but exceeded it in the most subtle yet significant aspects of the case. It did not undermine the proper function of the adversarial process or proceedings but complimented them in the form and manner in which the result was achieved. One might be inclined to attribute such good fortune to luck but this attorney from experience can state that Iron County juries are notoriously uncompromising when it involves circumstances of drugs, assault, presence of a shotgun, modification of its ammunition and home intrusion all happening across the street from the public library and City Park where children and families frequent with regularity on weekends. It is by any measure a favorable outcome for the Appellant orchestrated masterfully by defense counsel. It is after careful consideration and review of the record and transcripts that this attorney believes that the appropriate action is to submit his position to this Court in the form of an Anders' Brief.

CONCLUSION

On the grounds and for the reasons set forth above, counsel for Appellant, having submitted this brief in the fashion of Anders' as required by State v. Wells, 2000 Utah App. 304, 13 P.3d 1056, having exercised due diligence in attempting to support Appellant's appeal to the best of his ability, having underwent a thorough examination of the record and transcripts in the case and having set forth those points and authorities disclosing a basis which might arguably support an appeal, having furnished the Appellant with a copy and provided him with an opportunity to identify issues for consideration, the Appellant having chosen not to do so, this attorney requests leave to withdraw, after the Court's review and determining that no additional issues could have been raised or finding that Appellant had no desire to submit a brief on his own. In other words, counsel for Appellant requests that action be taken by the Utah Court of Appeals to either dismiss the appeal or proceed to a decision on the merits together with such other and further relief as to it appears equitable and proper.

DATED this 17th day of June, 2014.



J. BRYAN JACKSON
Counsel for Appellant

CERTIFICATE OF MAILING

I hereby certify that on the 19th day of March, 2012, I mailed a true and complete photocopy of the forgoing, *ANDERS' BRIEF*, by way of the U.S. mail postage fully paid to:

UTAH COURT OF APPEALS

450 South State Street
PO Box 140230
Salt Lake City, UT 84114-0230

ATTORNEY GENERAL'S OFFICE

350 North State Street
PO Box 142320
Salt Lake City, UT 84114-2320

IRON COUNTY ATTORNEY'S OFFICE

82 North 100 East, Suite 201
PO Box 428
Cedar City, Utah 84721-0428

EDDIE RAY BOZARTH JR.

Inmate #: 132115
Utah State Prison
P.O. Box 250
Draper, UT 84020



Sharon E. Sternberg, MS, Legal Assistant

ADDENDUM

EXHIBIT A

Title/Chapter/Section:

[Go To](#)[Search Code by Key Word](#)[<< Previous Section \(78A-4-102\)](#)[Next Section \(78A-4-104\) >>](#)[Utah](#)[Code](#)[Title](#)[78A](#)

Judiciary and Judicial Administration

[Chapter](#)[4](#)

Court of Appeals

[Section](#)[103](#)

Court of Appeals jurisdiction.

78A-4-103. Court of Appeals jurisdiction.

(1) The Court of Appeals has jurisdiction to issue all extraordinary writs and to issue all writs and process necessary:

(a) to carry into effect its judgments, orders, and decrees; or

(b) in aid of its jurisdiction.

(2) The Court of Appeals has appellate jurisdiction, including jurisdiction of interlocutory appeals, over:

(a) the final orders and decrees resulting from formal adjudicative proceedings of state agencies or appeals from the district court review of informal adjudicative proceedings of the agencies, except the Public Service Commission, State Tax Commission, School and Institutional Trust Lands Board of Trustees, Division of Forestry, Fire, and State Lands actions reviewed by the executive director of the Department of Natural Resources, Board of Oil, Gas, and Mining, and the state engineer;

(b) appeals from the district court review of:

(i) adjudicative proceedings of agencies of political subdivisions of the state or other local agencies; and

(ii) a challenge to agency action under Section [63G-3-602](#);

(c) appeals from the juvenile courts;

(d) interlocutory appeals from any court of record in criminal cases, except those involving a charge of a first degree or capital felony;

(e) appeals from a court of record in criminal cases, except those involving a conviction or charge of a first degree felony or capital felony;

(f) appeals from orders on petitions for extraordinary writs sought by persons who are incarcerated or serving any other criminal sentence, except petitions constituting a challenge to a conviction of or the sentence for a first degree or capital felony;

(g) appeals from the orders on petitions for extraordinary writs challenging the decisions of the Board of Pardons and Parole except in cases involving a first degree or capital felony;

(h) appeals from district court involving domestic relations cases, including, but not limited to, divorce, annulment, property division, child custody, support, parent-time, visitation, adoption, and paternity;

(i) appeals from the Utah Military Court; and

(j) cases transferred to the Court of Appeals from the Supreme Court.

(3) The Court of Appeals upon its own motion only and by the vote of four judges of the court may certify to the Supreme Court for original appellate review and determination any matter over which the Court of Appeals has original appellate jurisdiction.

(4) The Court of Appeals shall comply with the requirements of Title 63G, Chapter 4, Administrative Procedures Act, in its review of agency adjudicative proceedings.

Amended by Chapter 344, 2009 General Session

Download Code Section [Zipped](#) WordPerfect [78A04_010300.ZIP](#) 2,947 Bytes

[<< Previous Section \(78A-4-102\)](#)[Next Section \(78A-4-104\) >>](#)

Rule 11. Pleas.

(a) Upon arraignment, except for an infraction, a defendant shall be represented by counsel, unless the defendant waives counsel in open court. The defendant shall not be required to plead until the defendant has had a reasonable time to confer with counsel.

(b) A defendant may plead not guilty, guilty, no contest, not guilty by reason of insanity, or guilty and mentally ill. A defendant may plead in the alternative not guilty or not guilty by reason of insanity. If a defendant refuses to plead or if a defendant corporation fails to appear, the court shall enter a plea of not guilty.

(c) A defendant may plead no contest only with the consent of the court.

(d) When a defendant enters a plea of not guilty, the case shall forthwith be set for trial. A defendant unable to make bail shall be given a preference for an early trial. In cases other than felonies the court shall advise the defendant, or counsel, of the requirements for making a written demand for a jury trial.

(e) The court may refuse to accept a plea of guilty, no contest or guilty and mentally ill, and may not accept the plea until the court has found:

(e)(1) if the defendant is not represented by counsel, he or she has knowingly waived the right to counsel and does not desire counsel;

(e)(2) the plea is voluntarily made;

(e)(3) the defendant knows of the right to the presumption of innocence, the right against compulsory self-incrimination, the right to a speedy public trial before an impartial jury, the right to confront and cross-examine in open court the prosecution witnesses, the right to compel the attendance of defense witnesses, and that by entering the plea, these rights are waived;

(e)(4)(A) the defendant understands the nature and elements of the offense to which the plea is entered, that upon trial the prosecution would have the burden of proving each of those elements beyond a reasonable doubt, and that the plea is an admission of all those elements;

(e)(4)(B) there is a factual basis for the plea. A factual basis is sufficient if it establishes that the charged crime was actually committed by the defendant or, if the defendant refuses or is otherwise unable to admit culpability, that the prosecution has sufficient evidence to establish a substantial risk of conviction;

(e)(5) the defendant knows the minimum and maximum sentence, and if applicable, the minimum mandatory nature of the minimum sentence, that may be imposed for each offense to which a plea is entered, including the possibility of the imposition of consecutive sentences;

(e)(6) if the tendered plea is a result of a prior plea discussion and plea agreement, and if so, what agreement has been reached;

(e)(7) the defendant has been advised of the time limits for filing any motion to withdraw the plea; and

(e)(8) the defendant has been advised that the right of appeal is limited.

These findings may be based on questioning of the defendant on the record or, if used, a written statement reciting these factors after the court has established that the defendant has read, understood, and acknowledged the contents of the statement. If the defendant cannot understand the English language, it will be sufficient that the statement has been read or translated to the defendant.

Unless specifically required by statute or rule, a court is not required to inquire into or advise concerning any collateral consequences of a plea.

(f) Failure to advise the defendant of the time limits for filing any motion to withdraw a plea of guilty, no contest or guilty and mentally ill is not a ground for setting the plea aside, but may be the ground for extending the time to make a motion under Section 77-13-6.

(g) If the defendant pleads guilty, no contest, or guilty and mentally ill to a misdemeanor crime of domestic violence, as defined in Utah Code Section 77-36-1, the court shall advise the defendant orally or in writing that, as a result of the plea, it is unlawful for the defendant to possess, receive or transport any firearm or ammunition. The failure to advise does not render the plea invalid or form the basis for withdrawal of the plea.

(h)(1) If it appears that the prosecuting attorney or any other party has agreed to request or recommend the acceptance of a plea to a lesser included offense, or the dismissal of other charges, the agreement shall be approved or rejected by the court.

(h)(2) If sentencing recommendations are allowed by the court, the court shall advise the defendant personally that any recommendation as to sentence is not binding on the court.

(i)(1) The judge shall not participate in plea discussions prior to any plea agreement being made by the prosecuting attorney.

(i)(2) When a tentative plea agreement has been reached, the judge, upon request of the parties, may permit the disclosure of the tentative agreement and the reasons for it, in advance of the time for tender of the plea. The judge may then indicate to the prosecuting attorney and defense counsel whether the proposed disposition will be approved.

(i)(3) If the judge then decides that final disposition should not be in conformity with the plea agreement, the judge shall advise the defendant and then call upon the defendant to either affirm or withdraw the plea.

(j) With approval of the court and the consent of the prosecution, a defendant may enter a conditional plea of guilty, guilty and mentally ill, or no contest, reserving in the record the right, on appeal from the judgment, to a review of the adverse determination of any specified pre-trial motion. A defendant who prevails on appeal shall be allowed to withdraw the plea.

(k) When a defendant tenders a plea of guilty and mentally ill, in addition to the other requirements of this rule, the court shall hold a hearing within a reasonable time to determine if the defendant is mentally ill in accordance with Utah Code Ann. § 77-16a-103.

variance from the procedures required by this rule which does not affect substantial rights shall be disregarded. Failure to comply with this rule is not, by itself, sufficient grounds for a collateral attack on a guilty plea.

Advisory Committee Notes

Title/Chapter/Section:

[Go To](#)[Search Code by Key Word](#)[<< Previous Section \(41-6a-1309\)](#)[Next Section \(41-6a-1402\) >>](#)[Utah](#)[Code](#)[Title 41](#) Motor Vehicles[Chapter](#) Traffic Code[6a](#)

Section 1401 Standing or parking vehicles -- Restrictions and exceptions.

41-6a-1401. Standing or parking vehicles – Restrictions and exceptions.

(1) Except when necessary to avoid conflict with other traffic, or in compliance with law, the directions of a peace officer, or a traffic-control device, a person may not:

(a) stop, stand, or park a vehicle:

(i) on the roadway side of any vehicle stopped or parked at the edge or curb of a street;

(ii) on a sidewalk;

(iii) within an intersection;

(iv) on a crosswalk;

(v) between a safety zone and the adjacent curb or within 30 feet of points on the curb immediately opposite the ends of a safety zone, unless a different length is indicated by signs or markings;

(vi) alongside or opposite any street excavation or obstruction when stopping, standing, or parking would obstruct traffic;

(vii) on any bridge or other elevated structure, on a highway, or within a highway tunnel;

(viii) on any railroad tracks;

(ix) on any controlled-access highway;

(x) in the area between roadways of a divided highway, including crossovers; or

(xi) any place where a traffic-control device prohibits stopping, standing, or parking;

(b) stand or park a vehicle, whether occupied or not, except momentarily to pick up or discharge a passenger or passengers:

(i) in front of a public or private driveway;

(ii) within 15 feet of a fire hydrant;

(iii) within 20 feet of a crosswalk;

(iv) within 30 feet upon the approach to any flashing signal, stop sign, yield sign, or traffic-control signal located at the side of a roadway;

(v) within 20 feet of the driveway entrance to any fire station and on the side of a street opposite the entrance to any fire station within 75 feet of the entrance when properly signposted; or

(vi) at any place where a traffic-control device prohibits standing; or

(c) park a vehicle, whether occupied or not, except temporarily for the purpose of and while actually engaged in loading or unloading property or passengers:

(i) within 50 feet of the nearest rail of a railroad crossing; or

(ii) at any place where traffic-control devices prohibit parking.

(2) A person may not move a vehicle that is not lawfully under the person's control into any prohibited area or into an unlawful distance from the curb.

(3) This section does not apply to a tow truck motor carrier responding to a customer service call if the tow truck motor carrier has already received authorization from the local law enforcement agency in the jurisdiction where the vehicle to be towed is located.

[<< Previous Section \(41-6a-1309\)](#)

[Next Section \(41-6a-1402\) >>](#)

[Questions/Comments](#) | [Utah State Home Page](#) | [Terms of Use/Privacy Policy](#) | [ADA Notice](#)

Title/Chapter/Section:

[Go To](#)[Search Code by Key Word](#)[<< Previous Section \(58-37-7\)](#)[Next Section \(58-37-8.5\) >>](#)[Utah](#)[Code](#)[Title 58](#) Occupations and Professions[Chapter 37](#) Utah Controlled Substances Act[Section 8](#) Prohibited acts -- Penalties.**58-37-8. Prohibited acts -- Penalties.**

(1) Prohibited acts A -- Penalties:

(a) Except as authorized by this chapter, it is unlawful for any person to knowingly and intentionally:

(i) produce, manufacture, or dispense, or to possess with intent to produce, manufacture, or dispense, a controlled or counterfeit substance;

(ii) distribute a controlled or counterfeit substance, or to agree, consent, offer, or arrange to distribute a controlled or counterfeit substance;

(iii) possess a controlled or counterfeit substance with intent to distribute; or

(iv) engage in a continuing criminal enterprise where:

(A) the person participates, directs, or engages in conduct which results in any violation of any provision of Title 58, Chapters 37, 37a, 37b, 37c, or 37d that is a felony; and

(B) the violation is a part of a continuing series of two or more violations of Title 58, Chapters 37, 37a, 37b, 37c, or 37d on separate occasions that are undertaken in concert with five or more persons with respect to whom the person occupies a position of organizer, supervisor, or any other position of management.

(b) Any person convicted of violating Subsection (1)(a) with respect to:

(i) a substance or a counterfeit of a substance classified in Schedule I or II, a controlled substance analog, or gammahydroxybutyric acid as listed in Schedule III is guilty of a second degree felony and upon a second or subsequent conviction is guilty of a first degree felony;

(ii) a substance or a counterfeit of a substance classified in Schedule III or IV, or marijuana, or a substance listed in Section **58-37-4.2** is guilty of a third degree felony, and upon a second or subsequent conviction is guilty of a second degree felony; or

(iii) a substance or a counterfeit of a substance classified in Schedule V is guilty of a class A misdemeanor and upon a second or subsequent conviction is guilty of a third degree felony.

(c) Any person who has been convicted of a violation of Subsection (1)(a)(ii) or (iii) may be sentenced to imprisonment for an indeterminate term as provided by law, but if the trier of fact finds a firearm as defined in Section **76-10-501** was used, carried, or possessed on his person or in his immediate possession during the commission or in furtherance of the offense, the court shall additionally sentence the person convicted for a term of one year to run consecutively and not concurrently; and the court may additionally sentence the person convicted for an indeterminate term not to exceed five years to run consecutively and not concurrently.

(d) Any person convicted of violating Subsection (1)(a)(iv) is guilty of a first degree felony punishable by imprisonment for an indeterminate term of not less than seven years and which may be for life. Imposition or execution of the sentence may not be suspended, and the person is not eligible for probation.

(2) Prohibited acts B -- Penalties:

(a) It is unlawful:

(i) for any person knowingly and intentionally to possess or use a controlled substance analog or a controlled substance, unless it was obtained under a valid prescription or order, directly from a practitioner while acting in the course of the person's professional practice, or as otherwise authorized by this chapter;

(ii) for any owner, tenant, licensee, or person in control of any building, room, tenement, vehicle, boat, aircraft, or other place knowingly and intentionally to permit them to be occupied

by persons unlawfully possessing, using, or distributing controlled substances in any of those locations; or

(iii) for any person knowingly and intentionally to possess an altered or forged prescription or written order for a controlled substance.

(b) Any person convicted of violating Subsection (2)(a)(i) with respect to:

(i) marijuana, if the amount is 100 pounds or more, is guilty of a second degree felony;

(ii) a substance classified in Schedule I or II, marijuana, if the amount is more than 16 ounces, but less than 100 pounds, or a controlled substance analog, is guilty of a third degree felony; or

(iii) marijuana, if the marijuana is not in the form of an extracted resin from any part of the plant, and the amount is more than one ounce but less than 16 ounces, is guilty of a class A misdemeanor.

(c) Upon a person's conviction of a violation of this Subsection (2) subsequent to a conviction under Subsection (1)(a), that person shall be sentenced to a one degree greater penalty than provided in this Subsection (2).

(d) Any person who violates Subsection (2)(a)(i) with respect to all other controlled substances not included in Subsection (2)(b)(i), (ii), or (iii), including a substance listed in Section 58-37-4.2, or less than one ounce of marijuana, is guilty of a class B misdemeanor. Upon a second conviction the person is guilty of a class A misdemeanor, and upon a third or subsequent conviction the person is guilty of a third degree felony.

(e) Any person convicted of violating Subsection (2)(a)(i) while inside the exterior boundaries of property occupied by any correctional facility as defined in Section 64-13-1 or any public jail or other place of confinement shall be sentenced to a penalty one degree greater than provided in Subsection (2)(b), and if the conviction is with respect to controlled substances as listed in:

(i) Subsection (2)(b), the person may be sentenced to imprisonment for an indeterminate term as provided by law, and:

(A) the court shall additionally sentence the person convicted to a term of one year to run consecutively and not concurrently; and

(B) the court may additionally sentence the person convicted for an indeterminate term not to exceed five years to run consecutively and not concurrently; and

(ii) Subsection (2)(d), the person may be sentenced to imprisonment for an indeterminate term as provided by law, and the court shall additionally sentence the person convicted to a term of six months to run consecutively and not concurrently.

(f) Any person convicted of violating Subsection (2)(a)(ii) or (iii) is:

(i) on a first conviction, guilty of a class B misdemeanor;

(ii) on a second conviction, guilty of a class A misdemeanor; and

(iii) on a third or subsequent conviction, guilty of a third degree felony.

(g) A person is subject to the penalties under Subsection (2)(h) who, in an offense not amounting to a violation of Section 76-5-207:

(i) violates Subsection (2)(a)(i) by knowingly and intentionally having in the person's body any measurable amount of a controlled substance; and

(ii) operates a motor vehicle as defined in Section 76-5-207 in a negligent manner, causing serious bodily injury as defined in Section 76-1-601 or the death of another.

(h) A person who violates Subsection (2)(g) by having in the person's body:

(i) a controlled substance classified under Schedule I, other than those described in Subsection (2)(h)(ii), or a controlled substance classified under Schedule II is guilty of a second degree felony;

(ii) marijuana, tetrahydrocannabinols, or equivalents described in Subsection 58-37-4(2)(a)(iii)(S) or (AA), or a substance listed in Section 58-37-4.2 is guilty of a third degree felony; or

(iii) any controlled substance classified under Schedules III, IV, or V is guilty of a class A misdemeanor.

(i) A person is guilty of a separate offense for each victim suffering serious bodily injury or death as a result of the person's negligent driving in violation of Subsection 58-37-8(2)(g) whether or not the injuries arise from the same episode of driving.

(3) Prohibited acts C -- Penalties:

(a) It is unlawful for any person knowingly and intentionally:

(i) to use in the course of the manufacture or distribution of a controlled substance a license number which is fictitious, revoked, suspended, or issued to another person or, for the purpose of obtaining a controlled substance, to assume the title of, or represent oneself to be, a manufacturer, wholesaler, apothecary, physician, dentist, veterinarian, or other authorized person.

(ii) to acquire or obtain possession of, to procure or attempt to procure the administration of, to obtain a prescription for, to prescribe or dispense to any person known to be attempting to acquire or obtain possession of, or to procure the administration of any controlled substance by misrepresentation or failure by the person to disclose receiving any controlled substance from another source, fraud, forgery, deception, subterfuge, alteration of a prescription or written order for a controlled substance, or the use of a false name or address;

(iii) to make any false or forged prescription or written order for a controlled substance, or to utter the same, or to alter any prescription or written order issued or written under the terms of this chapter; or

(iv) to make, distribute, or possess any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing upon any drug or container or labeling so as to render any drug a counterfeit controlled substance.

(b) Any person convicted of violating Subsection (3)(a) is guilty of a third degree felony.

(4) Prohibited acts D -- Penalties:

(a) Notwithstanding other provisions of this section, a person not authorized under this chapter who commits any act declared to be unlawful under this section, Title 58, Chapter 37a, Utah Drug Paraphernalia Act, or under Title 58, Chapter 37b, Imitation Controlled Substances Act, is upon conviction subject to the penalties and classifications under this Subsection (4) if the trier of fact finds the act is committed:

(i) in a public or private elementary or secondary school or on the grounds of any of those schools;

(ii) in a public or private vocational school or postsecondary institution or on the grounds of any of those schools or institutions;

(iii) in those portions of any building, park, stadium, or other structure or grounds which are, at the time of the act, being used for an activity sponsored by or through a school or institution under Subsections (4)(a)(i) and (ii);

(iv) in or on the grounds of a preschool or child-care facility;

(v) in a public park, amusement park, arcade, or recreation center;

(vi) in or on the grounds of a house of worship as defined in Section 76-10-501;

(vii) in a shopping mall, sports facility, stadium, arena, theater, movie house, playhouse, or parking lot or structure adjacent thereto;

(viii) in or on the grounds of a library;

(ix) within any area that is within 1,000 feet of any structure, facility, or grounds included in Subsections (4)(a)(i), (ii), (iv), (vi), and (vii);

(x) in the presence of a person younger than 18 years of age, regardless of where the act occurs; or

(xi) for the purpose of facilitating, arranging, or causing the transport, delivery, or distribution of a substance in violation of this section to an inmate or on the grounds of any correctional facility as defined in Section 76-8-311.3.

(b) (i) A person convicted under this Subsection (4) is guilty of a first degree felony and shall be imprisoned for a term of not less than five years if the penalty that would otherwise have been established but for this Subsection (4) would have been a first degree felony.

(ii) Imposition or execution of the sentence may not be suspended, and the person is not eligible for probation.

(c) If the classification that would otherwise have been established would have been less than a first degree felony but for this Subsection (4), a person convicted under this Subsection (4) is guilty of one degree more than the maximum penalty prescribed for that offense. This Subsection (4)(c) does not apply to a violation of Subsection (2)(g).

(d) (i) If the violation is of Subsection (4)(a)(xi):

(A) the person may be sentenced to imprisonment for an indeterminate term as provided by law, and the court shall additionally sentence the person convicted for a term of one year to run consecutively and not concurrently; and

(B) the court may additionally sentence the person convicted for an indeterminate term not to exceed five years to run consecutively and not concurrently; and

(ii) the penalties under this Subsection (4)(d) apply also to any person who, acting with the mental state required for the commission of an offense, directly or indirectly solicits, requests, commands, coerces, encourages, or intentionally aids another person to commit a violation of Subsection (4)(a)(xi).

(e) It is not a defense to a prosecution under this Subsection (4) that the actor mistakenly believed the individual to be 18 years of age or older at the time of the offense or was unaware of the individual's true age; nor that the actor mistakenly believed that the location where the act occurred was not as described in Subsection (4)(a) or was unaware that the location where the act occurred was as described in Subsection (4)(a).

(5) Any violation of this chapter for which no penalty is specified is a third degree felony.

(6) For purposes of penalty enhancement under Subsections (1)(b) and (2)(c), a plea of guilty or no contest to a violation of this section which is held in abeyance under Title 77, Chapter 2a, Pleas in Abeyance, is the equivalent of a conviction, even if the charge has been subsequently reduced or dismissed in accordance with the plea in abeyance agreement.

(7) A person may be charged and sentenced for a violation of this section, notwithstanding a charge and sentence for a violation of any other section of this chapter.

(8) (a) Any penalty imposed for violation of this section is in addition to, and not in lieu of, any civil or administrative penalty or sanction authorized by law.

(b) Where violation of this chapter violates a federal law or the law of another state, conviction or acquittal under federal law or the law of another state for the same act is a bar to prosecution in this state.

(9) In any prosecution for a violation of this chapter, evidence or proof which shows a person or persons produced, manufactured, possessed, distributed, or dispensed a controlled substance or substances, is prima facie evidence that the person or persons did so with knowledge of the character of the substance or substances.

(10) This section does not prohibit a veterinarian, in good faith and in the course of the veterinarian's professional practice only and not for humans, from prescribing, dispensing, or administering controlled substances or from causing the substances to be administered by an assistant or orderly under the veterinarian's direction and supervision.

(11) Civil or criminal liability may not be imposed under this section on:

(a) any person registered under this chapter who manufactures, distributes, or possesses an imitation controlled substance for use as a placebo or investigational new drug by a registered practitioner in the ordinary course of professional practice or research; or

(b) any law enforcement officer acting in the course and legitimate scope of the officer's employment.

(12) (a) Civil or criminal liability may not be imposed under this section on any Indian, as defined in Subsection 58-37-2(1)(v), who uses, possesses, or transports peyote for bona fide traditional ceremonial purposes in connection with the practice of a traditional Indian religion as defined in Subsection 58-37-2(1)(w).

(b) In a prosecution alleging violation of this section regarding peyote as defined in Subsection 58-37-4(2)(a)(iii)(V), it is an affirmative defense that the peyote was used, possessed, or transported by an Indian for bona fide traditional ceremonial purposes in connection with the practice of a traditional Indian religion.

(c) (i) The defendant shall provide written notice of intent to claim an affirmative defense under this Subsection (12) as soon as practicable, but not later than 10 days prior to trial.

(ii) The notice shall include the specific claims of the affirmative defense.

(iii) The court may waive the notice requirement in the interest of justice for good cause shown, if the prosecutor is not unfairly prejudiced by the lack of timely notice.

(d) The defendant shall establish the affirmative defense under this Subsection (12) by a preponderance of the evidence. If the defense is established, it is a complete defense to the charges.

(13) (a) It is an affirmative defense that the person produced, possessed, or administered a controlled substance listed in Section 58-37-4.2 if the person:

(i) was engaged in medical research; and

(ii) was a holder of a valid license to possess controlled substances under Section 58-37-6.

(b) It is not a defense under Subsection (13)(a) that the person prescribed or dispensed a controlled substance listed in Section 58-37-4.2.

(14) It is an affirmative defense that the person possessed, in the person's body, a controlled substance listed in Section 58-37-4.2 if:

(a) the person was the subject of medical research conducted by a holder of a valid license to possess controlled substances under Section 58-37-6; and

(b) the substance was administered to the person by the medical researcher.

(15) If any provision of this chapter, or the application of any provision to any person or circumstances, is held invalid, the remainder of this chapter shall be given effect without the invalid provision or application.

(16) A legislative body of a political subdivision may not enact an ordinance that is less restrictive than any provision of this chapter.

Download Code Section Zipped WordPerfect 58_37_000800.ZIP 8,787 Bytes

[<< Previous Section \(58-37-7\)](#)

[Next Section \(58-37-8.5\) >>](#)

[Questions/Comments](#) | [Utah State Home Page](#) | [Terms of Use/Privacy Policy](#) | [ADA Notice](#)

Title/Chapter/Section:

[Go To](#)[Search Code by Key Word](#)[<< Previous Section \(76-5-101\)](#)[Next Section \(76-5-102.3\) >>](#)[Utah](#)[Code](#)[Title 76](#) Utah Criminal Code[Chapter 5](#) Offenses Against the Person[Section 102](#) Assault.**76-5-102. Assault.**

(1) Assault is:

- (a) an attempt, with unlawful force or violence, to do bodily injury to another;
- (b) a threat, accompanied by a show of immediate force or violence, to do bodily injury to another; or
- (c) an act, committed with unlawful force or violence, that causes bodily injury to another or creates a substantial risk of bodily injury to another.

(2) Assault is a class B misdemeanor.

(3) Assault is a class A misdemeanor if:

- (a) the person causes substantial bodily injury to another; or
 - (b) the victim is pregnant and the person has knowledge of the pregnancy.
- (4) It is not a defense against assault, that the accused caused serious bodily injury to another.

Amended by Chapter 109, 2003 General Session

Download Code Section [Zipped](#) WordPerfect [76_05_010200.ZIP](#) 1,836 Bytes[<< Previous Section \(76-5-101\)](#)[Next Section \(76-5-102.3\) >>](#)[Questions/Comments](#) | [Utah State Home Page](#) | [Terms of Use/Privacy Policy](#) | [ADA Notice](#)

Title/Chapter/Section:

[Go To](#)[Search Code by Key Word](#)[<< Previous Section \(76-5-102.8\)](#)[Next Section \(76-5-103.5\) >>](#)Utah CodeTitle 76 Utah Criminal CodeChapter 5 Offenses Against the Person

Section 103 Aggravated assault.

76-5-103. Aggravated assault.(1) A person commits aggravated assault if the person commits assault as defined in Section **76-5-102** and uses:(a) a dangerous weapon as defined in Section **76-1-601**; or

(b) other means or force likely to produce death or serious bodily injury.

(2) (a) A violation of Subsection (1) is a third degree felony, except under Subsection (2)(b).

(b) A violation of Subsection (1) that results in serious bodily injury is a second degree felony.

Amended by Chapter 193, 2010 General Session

Download Code Section [Zipped](#) WordPerfect [76_05_010300.ZIP](#) 1,853 Bytes[<< Previous Section \(76-5-102.8\)](#)[Next Section \(76-5-103.5\) >>](#)[Questions/Comments](#) | [Utah State Home Page](#) | [Terms of Use/Privacy Policy](#) | [ADA Notice](#)

Title/Chapter/Section:

[Go To](#)[Search Code by Key Word](#)[<< Previous Section \(76-6-202\)](#)[Next Section \(76-6-204\) >>](#)[Utah](#)[Code](#)[Title 76](#) Utah Criminal Code[Chapter](#)
[6](#) Offenses Against Property[Section](#)
[203](#) Aggravated burglary.**76-6-203. Aggravated burglary.**

(1) A person is guilty of aggravated burglary if in attempting, committing, or fleeing from a burglary the actor or another participant in the crime:

- (a) causes bodily injury to any person who is not a participant in the crime;
 - (b) uses or threatens the immediate use of a dangerous weapon against any person who is not a participant in the crime; or
 - (c) possesses or attempts to use any explosive or dangerous weapon.
- (2) Aggravated burglary is a first degree felony.
- (3) As used in this section, "dangerous weapon" has the same definition as under Section [76-1-601](#).

Amended by Chapter 170, 1989 General Session

Download Code Section [Zipped](#) WordPerfect [76_06_020300.ZIP](#) 1,860 Bytes

[<< Previous Section \(76-6-202\)](#)[Next Section \(76-6-204\) >>](#)

[Questions/Comments](#) | [Utah State Home Page](#) | [Terms of Use/Privacy Policy](#) | [ADA Notice](#)

Title/Chapter/Section:

[Go To](#)[Search Code by Key Word](#)[<< Previous Section \(77-13-5\)](#)[Next Section \(77-14-1\) >>](#)[Utah](#)[Code](#)[Title 77](#) Utah Code of Criminal Procedure[Chapter](#)
[13](#) Pleas[Section](#)
[6](#) Withdrawal of plea.**77-13-6. Withdrawal of plea.**

(1) A plea of not guilty may be withdrawn at any time prior to conviction.

(2) (a) A plea of guilty or no contest may be withdrawn only upon leave of the court and a showing that it was not knowingly and voluntarily made.

(b) A request to withdraw a plea of guilty or no contest, except for a plea held in abeyance, shall be made by motion before sentence is announced. Sentence may not be announced unless the motion is denied. For a plea held in abeyance, a motion to withdraw the plea shall be made within 30 days of pleading guilty or no contest.

(c) Any challenge to a guilty plea not made within the time period specified in Subsection (2)(b) shall be pursued under Title 78B, Chapter 9, Post-Conviction Remedies Act, and Rule 65C, Utah Rules of Civil Procedure.

Amended by Chapter 3, 2008 General Session

Download Code Section [Zipped](#) WordPerfect [77_13_000600.ZIP](#) 1,969 Bytes

[<< Previous Section \(77-13-5\)](#)[Next Section \(77-14-1\) >>](#)[Questions/Comments](#) | [Utah State Home Page](#) | [Terms of Use/Privacy Policy](#) | [ADA Notice](#)

EXHIBIT B

1 MR. ZABRISKIE: Thank you.

2 (Whereupon the Court called other cases.)

3 THE COURT: Okay. We're back on the Bozarth matter.
4 I'd hoped to take a quick break and do some research, but I
5 haven't been able to do that.

6 MR. ZABRISKIE: I think we've resolved the issue any
7 how, your Honor.

8 THE COURT: Okay. Mr. Zabriskie.

9 MR. ZABRISKIE: What we propose to the Court, and
10 this is consented to by the State, is that the defendant will
11 waive his right to a preliminary hearing as it relates to all
12 charges, then he will proceed today to enter a guilty plea on
13 Count No. 4 and we'll set the remainder for a disposition.

14 THE COURT: All right. And I have never asked the
15 State if they would accept the waiver, but upon review of
16 Rule 7 I probably ought to.

17 MR. LITTLE: Yes, Judge, the State would consent with
18 that.

19 THE COURT: All right. Mr. Bozarth, you have the
20 right to a preliminary hearing which I have scheduled for, I
21 think, the 16th. Is that what I said?

22 MR. ZABRISKIE: That's right, your Honor.

23 THE COURT: And at the preliminary hearing the State
24 is required to present enough evidence to convince the judge
25 that there's probable cause to believe that the crimes alleged

FIFTH DISTRICT COURT- CEDAR
IRON COUNTY, STATE OF UTAH

STATE OF UTAH,	:	MINUTES
Plaintiff,	:	REQUEST FOR BAIL REDUCTION
	:	ARRAIGNMENT
	:	NOTICE
	:	
vs.	:	Case No: 101500328 FS
EDDIE RAY JR BOZARTH,	:	Judge: G MICHAEL WESTFALL
Defendant.	:	Date: June 10, 2010

PRESENT

Clerk: lindah
Prosecutor: LITTLE, TROY A
Defendant
Defendant's Attorney(s): ZABRISKIE, RHOME D

DEFENDANT INFORMATION

Date of birth: April 24, 1964

Audio

Tape Number: cedcrt1 Tape Count: 2:03-2:20

CHARGES

1. AGGRAVATED BURGLARY - 1st Degree Felony
Plea: Not Guilty
2. AGGRAVATED ASSAULT CAUSING SERIOUS BODILY INJURY TO ANOTHER -
3rd Degree Felony
Plea: Not Guilty
3. AGGRAVATED ASSAULT CAUSING SERIOUS BODILY INJURY TO ANOTHER -
3rd Degree Felony
Plea: Not Guilty
4. PURCH, TRANS, POSSESS, USE OF A FIREARM BY RESTRICTED PERSON -
3rd Degree Felony
Plea: Guilty - Disposition: 06/10/2010 Guilty
5. POSSESSION OR USE OF A CONTROLLED SUBSTANCE - 3rd Degree Felony
Plea: Not Guilty
6. USE OR POSSESSION OF DRUG PARAPHERNALIA - Class B Misdemeanor
Plea: Not Guilty
7. PARKING, STOP OR STAND ON SIDEWALK OR WITHIN CROSSWALK - Class C
Misdemeanor
Plea: Not Guilty

ARRAIGNMENT

HEARING

Mr. Zabriskie entered appearance of counsel for the defendant. Defense states that Mr. Bozarth is prepared to plead guilty to count 4 only today.

The State objects to the defendant pleading guilty to count 4 and not guilty to the remainder of the counts.

TIME: 2:20 This matter is in recess.

TIME: 2:28 This matter is recalled.

The State presents the factual basis.

The State has no recommendations for sentencing at this time.

Rights and penalties are explained.

The defendant pleads guilty to count 4.

The Court accepts the guilty plea to count 4 and directs the same be entered.

The Court orders the preparation of a Presentence Investigation Report.

The Defendant waives his right to be sentenced in 2-45 days.

Sentencing is set for 7/27/10 at 9:30 a.m.

The matter is motion to reduce bail is heard.

Bail was previously set at \$30,00 cash only. The defense motions to convert cash only to bondable with random ua testing.

The State objects.

The Court denies the request.

This matter will be set for a two day jury trial on the other charges. The defense request the defendant be able to have contact visits with a psychologist. The Court has no object to visits, however will not rule on the request to have contact visits.

Counsel may speak with the jail regarding that matter and produce evidence to the court that the jail is agreeable to that.

SENTENCING is scheduled.

Date: 07/27/2010

Time: 09:30 a.m.

Location: COURTROOM 1 - (West)

DISTRICT COURT BUILDING

40 NORTH 100 EAST

CEDAR CITY, UT 84720

Before Judge: G MICHAEL WESTFALL

FILED
FIFTH DISTRICT COURT
2010 AUG 26 AM 11:57

IRON COUNTY

BY JH

RHOME D. ZABRISKIE, #9113
ZABRISKIE LAW FIRM, LLC
899 N Freedom Blvd., Ste. 200
Provo, Utah 84604
Phone: (801) 375-7680
Fax: (801) 375-7686

ATTORNEY FOR DEFENDANT

**IN THE FIFTH DISTRICT COURT - CEDAR DEPARTMENT
IRON COUNTY, STATE OF UTAH**

STATE OF UTAH,

Plaintiff,

vs.

EDDIE RAY JR BOZARTH,

Defendant.

**STIPULATED MOTION TO
CONTINUE SENTENCING TO A DATE
AFTER TRIAL**

Criminal No. 101500328

Judge Westfall

COMES NOW the defendant, by and through counsel, and hereby motions the court to continue sentencing for the guilty conviction to Count 4 to a date after trial.

MEMORANDUM

On June 10, 2010 the defendant entered a guilty plea to Count 4 which is for the offense of third degree felony "unlawful possession of a firearm by a restricted person." At the time the guilty plea to count 4 was accepted by the court it was determined that a jury trial would be held on the remaining counts on August 6, 2010. The court, however, scheduled sentencing for Count

4 to take place at the anticipated status conference on July 27, 2010. Since that time trial has been postponed on two separate occasions to give way for defendant's with priority trial status. A jury trial is now scheduled to address the remaining counts on October 28, 2010. In the meantime, the defendant has remained in custody continuously since the date of the alleged offenses on May 30, 2010. The defendant's bail is set at such an amount that he is unable to bond out. For this reason he will remain in custody until he is tried and has satisfied any order of incarceration to be included in a sentencing order.

Based upon the foregoing, there is no harm that will come to a victim, to the State, or to the administration of the Court's calendar if the defendant's sentencing hearing, as it relates to Count 4, is postponed until after the October 28, 2010 jury trial.

On the other hand, there is potential of a disadvantage accruing to the defendant if sentencing is to take place on Count 4 prior to trial on the remaining counts. Namely, the defendant will be limited in what he can offer in the way of mitigation as he seeks to explain what his intentions were in having a gun in his possession. Certainly, a restricted person's purpose is possessing a firearm illegally could be considered either aggravating, or mitigating at sentencing. This purpose, when considered by the court, could make a difference in whether the judge finds the offense worthy of a prison sentence, or something less.

Unfortunately, if he is sentenced on Count 4 before trial, the defendant will be limited in the sense that he will not be able to make statements at sentencing that would reveal the content

of his anticipated trial testimony, or that could reveal trial strategy of his attorneys. The defendant's possession of a firearm, and the intent he had in possession the firearm goes right to the elements of Counts 1 through 3 on the information. Each of those offenses are designated as "aggravated" crimes and all are charged at a higher degree of offense than the firearm possession charge. The potential for punishment for Counts 1 through 3 is, correspondingly, much more severe than the potential for punishment in relation the firearm possession charge. Therefore, in the interest of justice, any concerns of fairness and judicial economy as it relates to the sentencing date for Count 4, should give way to precautions that will guarantee the defendant a fair sentence in relation to Count 4, and a fair trial in relation to the other counts.

Based upon these concerns the defendant waives time for sentencing (and is prepared to do so on the record) as necessary to have his trial date first. Furthermore, Troy Little of the Iron County Attorney's Office offered his stipulation to this motion by telephone on this 25th day of August, 2010.

CONCLUSION

Based upon the foregoing good cause, and in the interest of fairness, the defendant's motion should be granted.

DATED this 25th day of August 2010.


RHOME D. ZABRISKIE
Attorney for Defendant

Utah State Court
PO Box 250
Draper Utah 84020

FILED
FIFTH DISTRICT COURT

FIFTH DISTRICT COURT

IRON COUNTY UTAH

EDDIE R. BOZARTH JR.

Pro Se Defendant

V.

STATE OF UTAH

Case # BY 101500328

Notice of Appeal:

Before the court comes EDDIE R. BOZARTH JR., Defendant, giving notice of intent to appeal and asking for the court to take the steps necessary to transmit the record to the appeals court.

Sworn and dated this Dec. 20, 2010.

Eddie R. Bozarth Jr.

Eddie R. BOZARTH Jr.

I certify that on 12/20/2010 a true and correct copy was mailed Pre-paid First class mail to 80W 100 East Cedar City UT to the County Attorney.

SCANNED

1 Q Okay. And that's here in Cedar City?

2 A Yes, it is.

3 Q And what time did you respond?

4 A Again, looking at my report, 15:29.

5 Q Okay.

6 A Which is three, I'm sorry, 3:29.

7 Q Okay. And were you the first officer to respond?

8 A Actually myself and Officer Medina arrived relatively
9 close to the same time. I'm talking within a couple of
10 seconds.

11 Q Okay. And when you responded, what did you observe?

12 A I parked just a little bit to the north of the
13 residence. And as I parked a little bit to the north of the
14 residence, I saw a female subject come out towards the center
15 of the street, look down and begin waiving her arms at me.

16 Q Okay.

17 A And she was fairly upset, emotional, alarmed.

18 Q Okay. And who was that? Did you later identify who
19 that female was?

20 A Yes, I did. It was one of the complainants that were
21 on scene that we spoke with.

22 Q Do you remember her name or do you need to refresh
23 your memory?

24 A If I can look at the report and refresh my memory on
25 it. Margaret Vose

1 Q Okay. And what did you do? What information did you
2 glean from her?

3 A She was, like I said, emotional. Indicated that we
4 needed to get in the house right away. She said He's got him
5 on the floor. Please help us. That sort of thing. Myself and
6 Officer Medina then made entry into the house.

7 Q Okay. And describe how you made entry?

8 A We just walked in through the front door. It was
9 already opened. The front door was already open so it was not
10 a forcible entry or a dynamic entry. We just went in through
11 the front door.

12 Q When you say dynamic, that means your entry was not
13 forced?

14 A That's correct, yes.

15 Q Did you have your weapons drawn?

16 A I don't honestly recall whether or not I did. I
17 believe it's quite possible that we did.

18 Q Okay. Now, what did you see when you first got in
19 there?

20 A First thing that we saw was two male subjects that
21 were laying on the floor. One was on top of the other one
22 trying to restrain him.

23 Q And do you recall who was restraining whom?

24 A I recall Mr. Bozarth was being restrained by Mr.

25 Kalles. I believe

1 Q Okay. And what did you do -- did you see a gun?

2 A Yes, I did.

3 MR. LITTLE: May I approach the witness, please,
4 Judge?

5 THE COURT: You may.

6 BY MR. LITTLE:

7 Q I'm showing you what's been marked as State's Exhibit
8 No. 1. What is that?

9 A A 410 shotgun.

10 Q Okay. And is that the gun that was in the residence?

11 A Yes, it is.

12 Q The same gun?

13 A Yes, it is.

14 Q And where was it in relationship to the --

15 A It was a couple feet from where the two persons were
16 laying on the floor. It was laying almost in the same position
17 that it is now meaning that the breach of it was open. We
18 could see the gun plainly and it was laying just in front of
19 them on the floor near where they were on the floor.

20 Q Okay.

21 MR. LITTLE: May I approach, judge?

22 THE COURT: You may.

23 BY MR. LITTLE:

24 Q I'm showing you State's Exhibit No. 2. Do you
25 recognize that photograph?

1 Exhibit 2?

2 A Okay.

3 Q And that's where you saw it when you came in?

4 A Yes.

5 Q And was it -- was it broken open like it's shown
6 there?

7 A Yes, it was.

8 Q Did you have a chance to examine that gun or did you
9 touch it in anyway?

10 A No, I did not.

11 Q If I told you that the gun would not function, would
12 not work, would not stay closed, you would have no personal
13 knowledge to the contrary?

14 A That's correct.

15 Q How long were you on the scene?

16 A Half an hour roughly. It wasn't a long time. Your
17 client did not want to answer any questions and I transported
18 him to the jail after that.

19 Q You are aware that he did talk to Officer Garrison
20 thereafter while he didn't talk to you. Did you ask him if he
21 wanted to talk to you in private?

22 A If he wanted to talk to myself in private?

23 Q Uh-huh. When you first inquired?

24 A No.

25 Q In other words, when you give them the Miranda and

1 they indicate that they would rather not talk, then you shut it
2 down right there?

3 A Exactly.

4 Q All right. Did you do any collecting of the
5 evidence?

6 A No, sir.

7 Q Did you notice any furnishings broken in the house
8 that you could attribute to this incident?

9 A There were things that were in disarray. There were
10 some things that had been knocked over. Like I said, you could
11 tell that there had been somewhat of a tussle in the residence.

12 Q Uh-huh. And of course you don't know what the
13 residence looked like before you got there or before this
14 incident because you'd never been there before. Isn't that the
15 case?

16 A That's correct.

17 Q Did you have any acquaintance with Mr. Kalles prior?

18 A To my recollection I want to say no. I would have to
19 research reports and things like that to see. 20 years of
20 service it's hard to say no I haven't ever dealt with him.

21 Q When you took Mr. Bozarth into custody, did he resist
22 you?

23 A No, he did not.

24 Q In fact, he was docile?

25 A As I recall, yes.

1 Bailey or Eddie Bozarth?

2 A Me and Kimberly had another conversation that day.

3 Q Okay.

4 A And that's when I realized where the message had came
5 from.

6 Q Okay. Let's move to Sunday, okay? What was your
7 plans for that Sunday?

8 A We were going to have a few friends over and have a
9 barbecue. It was Memorial Day and it was Sunday and the
10 weather was really nice.

11 Q Okay. And prior to Mr. Bozarth coming to your home,
12 what were you doing?

13 A I was in my kitchen making potato salad when my door
14 got kicked in. My lady friend was sitting in the TV room
15 watching TV at the time.

16 Q Okay.

17 A We were just mellow, just relaxing, enjoying the day.

18 Q And so describe that. So you're in your kitchen.

19 A Yeah, I'm in there making my potato salad, chopping
20 up the potatoes and all of a sudden I hear this big boom at my
21 front door. I have a Doberman and my Doberman was in the
22 kitchen and she reacted so I just kind of walked in there,
23 walked past the TV room, walked into the front formal living
24 room. As soon as I entered the room, Mr. Bozarth was standing
25 there with a gun and just started immediately pulling the

1 trigger. And then I looked over my shoulder and told my lady
2 friend call the police. This man has a gun. I didn't even
3 recognize him because like I said, I only met him one time
4 before.

5 She come around the corner, took a look, and he
6 pulled the gun on her and continued to pull the trigger and I
7 grabbed the gun and me and him wrestled until I got the gun
8 away and held him down until the police arrived.

9 Q Okay. Now, you said you were in the kitchen, okay?
10 And was your door closed?

11 A Yes, my door was closed.

12 Q Okay. And so how did he get in? Was the door
13 locked?

14 A No, the screen was locked, but the door was not
15 locked so the screen is damaged now. I need to have it
16 replaced. He damaged my screen door and came into my house.

17 Q And so where was he in relationship -- so if you walk
18 right into your front door, what room would you be in?

19 A Into my formal living room.

20 Q And so how far was he when you first spotted him?

21 A In the center of the room. He was standing there
22 and, see, there's a -- you come in and there's an off-way going
23 into the bathroom and then another off-way here that goes back
24 to the kitchen and another TV room. He was standing right in
25 the middle of the room so he could be in the center of either

1 A Nope.

2 Q Now, as you -- in the month of May -- and evidently
3 that's when the demands began for the monies that were owed to
4 you? Isn't that the case?

5 A Approximately, yes.

6 Q And during the -- let's narrow it down. The last two
7 weeks of May of this year, isn't it true that you were calling
8 Ms. Bailey five, six, seven, eight times a day demanding that
9 you be paid?

10 A The phone calls were coming both ways.

11 Q She'd call you back?

12 A With very nasty texts, yes.

13 Q Isn't it true that you were threatening her?

14 A I was being threatened right back.

15 Q Can you answer the question yes or no? Were you
16 threatening her?

17 A No, I was threatening her business.

18 Q Were you threatening her?

19 A I was threatening her business. Gonna shut her
20 business down.

21 Q If there's telephone records to the effect that you
22 threatened her life, they would be wrong?

23 A Very much so, yes.

24 Q Did you provide your telephone records to the police?

25 A No one ever asked for them. That's a no.

1 A That is not true.

2 Q Have you had any dealings with Mr. Kalles wherein
3 there has been an exchange of money?

4 A Yes.

5 Q And what is the nature of that business?

6 A For purchase of marijuana.

7 Q Have you purchased marijuana from Mr. Kalles before?

8 A Yes, I have.

9 Q How many times have you done that?

10 A I can't really say. Maybe once a week or twice a
11 month.

12 Q For how long?

13 A For the past three years.

14 Q Uh-huh. Do you realize that you're admitting to --

15 A Yes, I do.

16 Q -- a crime?

17 A Yes, I do. And I'm willing to take the consequences
18 for that.

19 Q Now, going back to May of this year, 2010, did you
20 make a purchase of marijuana from Mr. Kalles?

21 A I had gotten marijuana from him. I didn't pay for it
22 at the time.

23 Q And how much was that?

24 A \$25.

25 Q So you had it on account? Is that what you're

1 Q Okay. And what does it reflect?

2 A It reflects the -- these phone calls, you can also
3 tell that I had shut my phone off for hours. And my voicemail
4 retrievals, they were quite upsetting phone calls so I did
5 not --

6 Q Well, what are the nature of the calls?

7 A Threatening. Threatening my life. Threatening my
8 family. Threatening my 98 year old grandma. Threatening my
9 business that I have a very successful business at. He
10 threatened to tell all my employees or all my clients that I'm
11 broke and I can't repay his \$25 loan.

12 Q You indicated that -- was he calling you on -- give
13 me the frequency. How many times a day was he calling you?

14 A I'd say about five to 13 times a day and texting me.
15 When I wouldn't -- when I had my phone off, I assume he had
16 sent texts because those I can receive and I did when I turned
17 my phone on but --

18 MR. ZABRISKIE: May I approach, your Honor?

19 THE WITNESS: -- I did not respond to any of them
20 because I did not -- I was in fear of him. I did not want to
21 stir anymore fire. I was actually going to take his \$25 to the
22 police and go deliver it to Mr. Kalles knowing my consequences.

23 BY MR. ZABRISKIE:

24 Q Please identify this for me. Do you know what that
25 was?

tough. It's awful, you know. And I really like this girl, you know. I mean, I didn't want to lose her.

Q And where did you go after leaving her house?

A I went straight to Lee's house.

Q All right. Now, how much money did you have with you or do you recall?

A I had a little over 40 bucks, I think.

Q Okay. And how was it made out?

A It was in rolled coins on the front seat of my car.

Q Okay. Now, do you recognize this State's Exhibit 1, the shotgun?

A Yes, sir.

Q Where did you get that?

A That was over at the house. It's been over there for years. I've had that since I was eight or nine years old, I think.

Q And tell me about the gun. Prior to having it with you this time, how long had it been since you'd seen that gun?

A I probably hadn't seen it for ten years or so.

Q Was there anything wrong with that gun based on your recollection ten years ago?

A No, I hadn't even seen it. I seen it and it had a jammed shell in it. It was already jammed in the thing and I grabbed it and I figured hey this might be going for something. We could fix it, sell it, whatever.

1 Q I note that there's a stock missing on that. Was
2 that in that condition when you picked it up?

3 A Yeah, it's broken. I don't know what happened to it.

4 Q Okay. Now, may I ask you. You're a restricted
5 person, are you not?

6 A Yes, I am.

7 Q And you're not supposed to have a gun?

8 A No, I'm not.

9 Q Why did you have that gun?

10 A Like I told you, I was looking trying to find
11 something to get some money and get this taken care of and I
12 figured I could get it and get it over here and get rid of it,
13 do whatever, you know.

14 Q Now, you go to Lee's house. Do you recall -- did you
15 arrive at Lee's house?

16 A Yeah.

17 Q Do you recall what time you got there?

18 A It had to be just after three sometime.

19 Q And you pull up in front of his house?

20 A Yep.

21 Q Were you nervous?

22 A Heck, yeah. The dude has been telling me for two
23 weeks now that he's going to shoot me and that he's sending
24 other people to shoot me that I don't know who they are so I
25 can't pull up and go to any service station. I can't -- I'm

1 freaked out and plus her and that -- I'm not used to that.
2 People generally give me a decent amount of respect. I don't
3 know how to act when somebody is threatening to shoot me.

4 Q You parked your car; is that correct?

5 A Yes.

6 Q And you decide to go to the front door. Is this
7 approximately the same time?

8 A Yes.

9 Q And did you, in fact, go to the door?

10 A Yes, sir.

11 Q What about that gun?

12 A That gun? What do you mean -- can you be a little
13 more specific because I don't --

14 Q Why did you take the gun? It doesn't even shoot.

15 A Because I figured that might keep him from shooting
16 me. If he seen I had one, maybe he'd take me serious because
17 he hadn't taken nothing serious at all. The thing don't even
18 work, but I figured it might keep me from getting shot because
19 I figured that I was going to be attacked with his threats that
20 he had given me.

21 Q Okay. This gun. You've heard testimony to the
22 effect that this gun is not necessarily in the same condition
23 it was in on May 30th. Tell us the condition of that gun. By
24 that, would it connect? Could you lock it?

25 A I had to hold the thing by the breach to even keep it

1 were in the home.

2 Q Okay. So who did you gather statements from?

3 A Mr. Kalles, his girlfriend, Margaret Vose, and then
4 there was a Kimberly Bailey, I believe was her name, that had
5 also arrived shortly after we did.

6 Q Okay. Now -- and so you collected -- you just
7 collected the statements. Any other duties you had on the
8 scene that day?

9 A No, after that just the statements and that was
10 basically it.

11 Q Okay. Now, I want to turn your attention to State's
12 Exhibit No. 1. Did you have a chance to try to test fire that
13 shotgun?

14 A Yes, I did.

15 Q And when did you do that?

16 A This afternoon. This morning actually.

17 Q Okay. And what condition was it in when you received
18 it, the shotgun?

19 A Basically like this. It didn't have the twist ties
20 on it --

21 Q Okay.

22 A -- or the zip ties. And then myself and Officer
23 Carpenter took it up and test fired four rounds through it. He
24 fired two and I fired two rounds through it and it was
25 operational.

1 Q Was there any problems at all?

2 A None.

3 Q Okay. Are you familiar with that firearm?

4 A Yes.

5 Q Okay. Were you -- so you did not see that firearm,
6 though, on May 30th?

7 A No, I didn't touch it. I saw it and I saw other
8 officers handling it, but I didn't handle it.

9 Q Okay. So you and Ken Carpenter took that in custody
10 this morning from evidence?

11 A Yes.

12 Q Okay. And how many rounds did you shoot out of it?

13 A Two.

14 Q Okay.

15 A I did two and Ken did two.

16 MR. LITTLE: Okay. No further questions.

17 THE COURT: Mr. Zabriskie, do you want to
18 cross-examine him?

19 MR. ZABRISKIE: If I may, your Honor.

20 THE COURT: You may.

21

22 CROSS-EXAMINATION

23 BY MR. ZABRISKIE:

24 Q Officer Garrison, let's start at the back of the
25 direct examine and kind of move forward.

1 position?

2 A What it is is it's basically narcotics. We do
3 undercover buys. We investigate prescriptions. There's
4 extensive training. It's a whole lot of fun. I miss it.

5 Q Now, on May 30, 2010, did you respond kind of as a
6 backup to the Richard Lee Kalles home?

7 A Yes, I did.

8 Q And what was your responsibility that day?

9 A My responsibility that day was, one, containment, to
10 make sure that, you know, the other officers were safe and then
11 I also assisted in searching of the vehicle.

12 Q Okay. Let me show you State's Exhibit No. 28. Do
13 you recognize that?

14 A Yes, I do.

15 Q And why do you recognize that?

16 A I located this inside the vehicle.

17 Q Okay. And what is that?

18 A What this is is this is -- well, typically it's a
19 modified light bulb and they use it for smoking
20 methamphetamine. And what they will -- typically what they
21 will do is they will drop a piece of the methamphetamine inside
22 of the light bulb, put some kind of liquid in it and smoke it.
23 They inhale the fumes out of the top.

24 Q Okay. And why did you suspect that that would be
25 drug paraphernalia?

1 black cigarette lighter with it. There was also four more 410
2 shotgun shells one of which had been modified to be like the
3 one that I had taken out of the chamber.

4 Q And what do you mean by modified?

5 A The shotgun shells (inaudible) had No. 5 shot in it.
6 It looked like the ends of the shotgun shells had been pried
7 open. The shot had been dumped out and they had been reloaded
8 with ball-bearings.

9 Q Okay. And so what's the effect of that opposed to
10 regular shot and ball-bearing shot?

11 A Well, shot is in order to hunt small game birds and
12 rabbits, things of that nature, without doing much damage to
13 the meat. Ball-bearing is to create maximum damage to large
14 game or large animals.

15 Q And how many shells did you find for this -- I guess
16 it's a 410 shotgun. How many shells did you find in this
17 vehicle?

18 A I don't remember exactly. I believe ten shotgun
19 shells in all, I believe. There was six in the trunk and four
20 in the front seat. I don't remember if Officer Chappell found
21 any others in the duffle bag or not.

22 MR. LITTLE: I think we're on 24, Judge. Do you
23 remember where are we?

24 THE COURT: No. 24 is the next -- 24 would be the
25 next exhibit.

FIFTH DISTRICT COURT- CEDAR
IRON COUNTY, STATE OF UTAH

STATE OF UTAH,	:	MINUTES
Plaintiff,	:	REQUEST FOR BAIL REDUCTION
	:	ARRAIGNMENT
	:	NOTICE
	:	
vs.	:	Case No: 101500328 FS
EDDIE RAY JR BOZARTH,	:	Judge: G MICHAEL WESTFALL
Defendant.	:	Date: June 10, 2010

PRESENT

Clerk: lindah

Prosecutor: LITTLE, TROY A

Defendant

Defendant's Attorney(s): ZABRISKIE, RHOME D

DEFENDANT INFORMATION

Date of birth: April 24, 1964

Audio

Tape Number: cedcrt1 Tape Count: 2:03-2:20

CHARGES

1. AGGRAVATED BURGLARY - 1st Degree Felony

Plea: Not Guilty

2. AGGRAVATED ASSAULT CAUSING SERIOUS BODILY INJURY TO ANOTHER -
3rd Degree Felony

Plea: Not Guilty

3. AGGRAVATED ASSAULT CAUSING SERIOUS BODILY INJURY TO ANOTHER -
3rd Degree Felony

Plea: Not Guilty

4. PURCH, TRANS, POSSESS, USE OF A FIREARM BY RESTRICTED PERSON -
3rd Degree Felony

Plea: Guilty - Disposition: 06/10/2010 Guilty

5. POSSESSION OR USE OF A CONTROLLED SUBSTANCE - 3rd Degree Felony

Plea: Not Guilty

6. USE OR POSSESSION OF DRUG PARAPHERNALIA - Class B Misdemeanor

Plea: Not Guilty

7. PARKING, STOP OR STAND ON SIDEWALK OR WITHIN CROSSWALK - Class C
Misdemeanor

Plea: Not Guilty

ARRAIGNMENT

HEARING

Mr. Zabriskie entered appearance of counsel for the defendant. Defense states that Mr. Bozarth is prepared to plead guilty to count 4 only today.

The State objects to the defendant pleading guilty to count 4 and not guilty to the remainder of the counts.

TIME: 2:20 This matter is in recess.

TIME: 2:28 This matter is recalled.

The State presents the factual basis.

The State has no recommendations for sentencing at this time.

Rights and penalties are explained.

The defendant pleads guilty to count 4.

The Court accepts the guilty plea to count 4 and directs the same be entered.

The Court orders the preparation of a Presentence Investigation Report.

The Defendant waives his right to be sentenced in 2-45 days.

Sentencing is set for 7/27/10 at 9:30 a.m.

The matter is motion to reduce bail is heard.

Bail was previously set at \$30,00 cash only. The defense motions to convert cash only to bondable with random ua testing.

The State objects.

The Court denies the request.

This matter will be set for a two day jury trial on the other charges. The defense request the defendant be able to have contact visits with a psychologist. The Court has no object to visits, however will not rule on the request to have contact visits.

Counsel may speak with the jail regarding that matter and produce evidence to the court that the jail is agreeable to that.

SENTENCING is scheduled.

Date: 07/27/2010

Time: 09:30 a.m.

Location: COURTROOM 1 - (West)
DISTRICT COURT BUILDING
40 NORTH 100 EAST
CEDAR CITY, UT 84720

Before Judge: G MICHAEL WESTFALL

FILED
FIFTH DISTRICT COURT
2010 AUG 26 AM 11:57
IRON COUNTY

BY RH

RHOME D. ZABRISKIE, #9113
ZABRISKIE LAW FIRM, LLC
899 N Freedom Blvd., Ste. 200
Provo, Utah 84604
Phone: (801) 375-7680
Fax: (801) 375-7686

ATTORNEY FOR DEFENDANT

**IN THE FIFTH DISTRICT COURT - CEDAR DEPARTMENT
IRON COUNTY, STATE OF UTAH**

STATE OF UTAH,

Plaintiff,

vs.

EDDIE RAY JR BOZARTH,

Defendant.

**STIPULATED MOTION TO
CONTINUE SENTENCING TO A DATE
AFTER TRIAL**

Criminal No. 101500328

Judge Westfall

COMES NOW the defendant, by and through counsel, and hereby motions the court to continue sentencing for the guilty conviction to Count 4 to a date after trial.

MEMORANDUM

On June 10, 2010 the defendant entered a guilty plea to Count 4 which is for the offense of third degree felony "unlawful possession of a firearm by a restricted person." At the time the guilty plea to count 4 was accepted by the court it was determined that a jury trial would be held on the remaining counts on August 6, 2010. The court, however, scheduled sentencing for Count

4 to take place at the anticipated status conference on July 27, 2010. Since that time trial has been postponed on two separate occasions to give way for defendant's with priority trial status. A jury trial is now scheduled to address the remaining counts on October 28, 2010. In the meantime, the defendant has remained in custody continuously since the date of the alleged offenses on May 30, 2010. The defendant's bail is set at such an amount that he is unable to bond out. For this reason he will remain in custody until he is tried and has satisfied any order of incarceration to be included in a sentencing order.

Based upon the foregoing, there is no harm that will come to a victim, to the State, or to the administration of the Court's calendar if the defendant's sentencing hearing, as it relates to Count 4, is postponed until after the October 28, 2010 jury trial.

On the other hand, there is potential of a disadvantage accruing to the defendant if sentencing is to take place on Count 4 prior to trial on the remaining counts. Namely, the defendant will be limited in what he can offer in the way of mitigation as he seeks to explain what his intentions were in having a gun in his possession. Certainly, a restricted person's purpose is possessing a firearm illegally could be considered either aggravating, or mitigating at sentencing. This purpose, when considered by the court, could make a difference in whether the judge finds the offense worthy of a prison sentence, or something less.

Unfortunately, if he is sentenced on Count 4 before trial, the defendant will be limited in the sense that he will not be able to make statements at sentencing that would reveal the content


of his anticipated trial testimony, or that could reveal trial strategy of his attorneys. The defendant's possession of a firearm, and the intent he had in possession the firearm goes right to the elements of Counts 1 through 3 on the information. Each of those offenses are designated as "aggravated" crimes and all are charged at a higher degree of offense than the firearm possession charge. The potential for punishment for Counts 1 through 3 is, correspondingly, much more severe than the potential for punishment in relation the firearm possession charge. Therefore, in the interest of justice, any concerns of fairness and judicial economy as it relates to the sentencing date for Count 4, should give way to precautions that will guarantee the defendant a fair sentence in relation to Count 4, and a fair trial in relation to the other counts.

Based upon these concerns the defendant waives time for sentencing (and is prepared to do so on the record) as necessary to have his trial date first. Furthermore, Troy Little of the Iron County Attorney's Office offered his stipulation to this motion by telephone on this 25th day of August, 2010.

CONCLUSION

Based upon the foregoing good cause, and in the interest of fairness, the defendant's motion should be granted.

DATED this 25th day of August 2010.


RHOME D. ZABRISKIE
Attorney for Defendant

1 A I'm suggesting it was an illegal search and you guys
2 went in there to get a gosh dang -- to try and see that after
3 you pulled up my license plates and seen that I had a past,
4 sir. That's what I'm suggesting. And I don't think I'm
5 actually suggesting it. I think I'm actually saying it.

6 Q You're saying what exactly?

7 A I'm saying it was a bogus investigation. You guys
8 went in my car trying to find stuff against me when I've been
9 telling the guy all the way to the thing this is somebody else
10 trying to -- that what had been happening. So the
11 investigation got all focused on me which is fine, you know, I
12 mean, if that's what you guys want, that's what it's going to
13 cost me. I guess you're really liking this because you're
14 doing a pretty good job because I really feel strongly about
15 that and you can get me to stand up here and say everything,
16 you know, and get everything that hurt me and everything else.
17 You know what? That's pretty good. That's pretty good when
18 somebody like me trying to do the right thing gets dealt with
19 by somebody like you who is trying to do the wrong thing to the
20 wrong guy. I don't think I want to talk to you anymore.

21 Q So are you refusing to answer any more of my
22 questions?

23 A No, sir, let's go. Let's continue on.

24 Q I'm just -- you suggested you don't want to talk to
25 me anymore. I'm just wondering --

TROY A. LITTLE - USB #9061
Chief Deputy Iron County Attorney
82 North 100 East, Suite #201
P.O. Box 428
Cedar City, Utah 84720
Telephone: (435) 865-5310
Telecopier: (435) 865-5329

FILED

DEC 14 2010

FIFTH JUDICIAL DISTRICT COURT
IRON COUNTY
DEPUTY CLERK *act*

IN THE FIFTH JUDICIAL DISTRICT COURT, IN AND FOR IRON COUNTY,
STATE OF UTAH

STATE OF UTAH,

Plaintiff,

vs.

EDDIE RAY BOZARTH JR.,
04/24/1964

Defendant.

**JUDGMENT, SENTENCE, and
COMMITMENT**

Criminal No. 101500328

Judge G. Michael Westfall

The Defendant, EDDIE RAY BOZARTH JR., having been found guilty by a jury of Purchase, Transfer, Possession or Use of a Firearm by Restricted Person, a Third-Degree Felony; Possession or Use of a Controlled Substance, a Third-Degree Felony; Threatening With or Using a Dangerous Weapon in a Fight or Quarrel, a Class A Misdemeanor; Threatening With or Using a Dangerous Weapon in a Fight or Quarrel, a Class A Misdemeanor; Possession of Drug Paraphernalia, a Class B Misdemeanor; and Unlawful Parking (Roadway), a Class C Misdemeanor, on October 28, 2010, and the Court having ordered the preparation of a presentence investigation report, and after said report was prepared and presented to the Court, the matter having been called on for sentencing on December 14, 2010 in Cedar City, Utah, and the above-named Defendant, EDDIE RAY BOZARTH JR., having appeared before the Court in

SCANNED

person together with his attorney of record, Rhome Zabriskie, and the State of Utah having appeared by and through Chief Deputy Iron County Attorney Troy A. Little, and the Court having reviewed the sentencing recommendation and having further reviewed the file in detail and thereafter having heard statements from the Defendant, his attorney, and the Chief Deputy Iron County Attorney, and the Court being fully advised in the premises now makes and enters the following Judgment, Sentence, and Commitment, to wit:

JUDGMENT

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Defendant, EDDIE RAY BOZARTH JR. has been convicted by a jury of Purchase, Transfer, Possession or Use of a Firearm by Restricted Person, a Third-Degree Felony; Possession or Use of a Controlled Substance, a Third-Degree Felony; Threatening With or Using a Dangerous Weapon in a Fight or Quarrel, a Class A Misdemeanor; Threatening With or Using a Dangerous Weapon in a Fight or Quarrel, a Class A Misdemeanor; Possession of Drug Paraphernalia, a Class B Misdemeanor; and Unlawful Parking (Roadway), a Class C Misdemeanor, and the Court having asked whether the Defendant had anything to say in regard to why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court, it is adjudged that the Defendant is guilty as charged and convicted.

SENTENCE

IT IS HEREBY ORDERED that the Defendant, EDDIE RAY BOZARTH JR., and pursuant to his conviction of Purchase, Transfer, Possession or Use of a Firearm by Restricted Person, a Third-Degree Felony, is hereby sentenced to a term of zero to five (0-5) years in the Utah State Prison.

IT IS FURTHER ORDERED that the Defendant, EDDIE RAY BOZARTH JR., pay a

fine in the amount of five hundred dollars (\$500.00), including an 90% surcharge for his conviction of the offense.

IT IS FURTHER ORDERED that the Defendant, EDDIE RAY BOZARTH JR., pay a thirty-three dollar (\$33) Court Security Fee for his conviction of the offense.

IT IS HEREBY ORDERED that the Defendant, EDDIE RAY BOZARTH JR., and pursuant to his conviction of Possession or Use of a Controlled Substance, a Third-Degree Felony, is hereby sentenced to a term of zero to five (0-5) years in the Utah State Prison.

IT IS FURTHER ORDERED that the Defendant, EDDIE RAY BOZARTH JR., pay a fine in the amount of five hundred dollars (\$500.00), including an 90% surcharge for his conviction of the offense.

IT IS FURTHER ORDERED that the Defendant, EDDIE RAY BOZARTH JR., pay a thirty-three dollar (\$33) Court Security Fee for his conviction of the offense.

IT IS HEREBY ORDERED that the Defendant, EDDIE RAY BOZARTH JR., and pursuant to his conviction of Threatening With or Using a Dangerous Weapon in a Fight or Quarrel, a Class A Misdemeanor; is hereby sentenced to a term of no more than one (1) year in the Iron County Jail and to be served in the Utah State Prison.

IT IS FURTHER ORDERED that the Defendant, EDDIE RAY BOZARTH JR., pay a thirty-three dollar (\$33) Court Security Fee for his conviction of the offense.

IT IS HEREBY ORDERED that the Defendant, EDDIE RAY BOZARTH JR., and pursuant to his conviction of Threatening With or Using a Dangerous Weapon in a Fight or Quarrel, a Class A Misdemeanor; is hereby sentenced to a term of no more than one (1) year in the Iron County Jail and to be served in the Utah State Prison.

IT IS FURTHER ORDERED that the Defendant, EDDIE RAY BOZARTH JR., pay a

thirty-three dollar (\$33) Court Security Fee for his conviction of the offense.

IT IS HEREBY ORDERED that the Defendant, EDDIE RAY BOZARTH JR., and pursuant to his conviction of Possession of Drug Paraphernalia, a Class B Misdemeanor; is hereby sentenced to a term of no more than six (6) months in the Iron County Jail and to be served in the Utah State Prison.

IT IS FURTHER ORDERED that the Defendant, EDDIE RAY BOZARTH JR., pay a thirty-three dollar (\$33) Court Security Fee for his conviction of the offense.

IT IS HEREBY ORDERED that the Defendant, EDDIE RAY BOZARTH JR., and pursuant to his conviction of Unlawful Parking (Roadway), a Class C Misdemeanor; is hereby sentenced to a term of no more than ninety (90) days in the Iron County Jail and to be served in the Utah State Prison.

IT IS FURTHER ORDERED that the Defendant, EDDIE RAY BOZARTH JR., pay a thirty-three dollar (\$33) Court Security Fee for his conviction of the offense.

IT IS FURTHER ORDERED that the sentences imposed herein shall be served concurrently in the Utah State Prison.

IT IS FURTHER ORDERED that restitution shall remain open for one hundred and twenty (120) days.

IT IS RECOMMENDED BY THE COURT that the Defendant EDDIE RAY BOZARTH, receive credit for one hundred and eight-seven (187) days served.

COMMITMENT

TO THE SHERIFF OF IRON COUNTY, STATE OF UTAH:

YOU ARE HEREBY COMMANDED to take the Defendant, EDDIE RAY BOZARTH JR., and deliver him to the Utah State Prison in Draper, Utah, there to be kept and confined in

accordance with the above and foregoing Judgment, Sentence, and Commitment.

DATED this 14 day of December, 2010.

BY THE COURT:



District Court Judge

CERTIFICATE

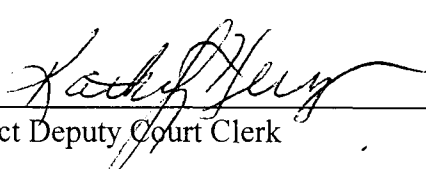
STATE OF UTAH)
 :SS.
COUNTY OF IRON)

I, CAROLYN SMITHERMAN, Clerk of the Fifth Judicial District Court in and for Iron County, State of Utah, hereby certify that the foregoing is a full, true and exact copy of the original Judgment, Sentence, and Commitment in the case entitled State of Utah vs. EDDIE RAY BOZARTH JR., Criminal No. 101500328 now on file and of record in my office.

WITNESS my hand and the seal of said office in Cedar City, County of Iron, State of Utah, this 14th day of December, 2010.



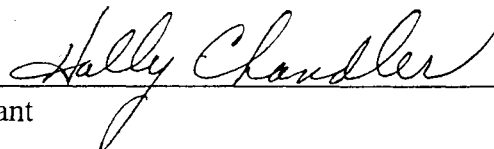
CAROLYN SMITHERMAN
District Clerk of Court

By: 

District Deputy Court Clerk

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I mailed a full, true, and correct copy of the within and foregoing, Judgment, Sentence, and Commitment, on this 14 day of December, 2010, to Rhome D. Zabriskie, Attorney for Defendant, at 899 North Freedom Blvd. Suite 200, Provo, Utah 84604.


Assistant

FIFTH DISTRICT COURT- CEDAR
IRON COUNTY, STATE OF UTAH

STATE OF UTAH, : MINUTES
Plaintiff, : SENTENCING
 : SENTENCE, JUDGMENT, COMMITMENT
 :
vs. : Case No: 101500328 FS
EDDIE RAY JR BOZARTH, : Judge: G MICHAEL WESTFALL
Defendant. : Date: December 14, 2010

PRESENT

Clerk: dawnw
Prosecutor: LITTLE, TROY A
Defendant
Defendant's Attorney(s): ZABRISKIE, RHOME D

DEFENDANT INFORMATION

Date of birth: April 24, 1964

Audio

Tape Number: CEDCRT1 Tape Count: 10:14-10:47

CHARGES

2. THREAT/USE OF DANGEROUS WEAPON IN FIGHT - Class A Misdemeanor
Plea: Guilty - Disposition: 10/28/2010 Guilty
3. THREAT/USE OF DANGEROUS WEAPON IN FIGHT - Class A Misdemeanor
Plea: Guilty - Disposition: 10/28/2010 Guilty
4. PURCH, TRANS, POSSESS, USE OF A FIREARM BY RESTRICTED PERSON -
3rd Degree Felony
Plea: Guilty - Disposition: 06/10/2010 Guilty
5. POSSESSION OR USE OF A CONTROLLED SUBSTANCE - 3rd Degree Felony
Plea: Guilty - Disposition: 10/28/2010 Guilty
6. USE OR POSSESSION OF DRUG PARAPHERNALIA - Class B Misdemeanor
Plea: Guilty - Disposition: 10/28/2010 Guilty
7. PARKING, STOP OR STAND ON SIDEWALK OR WITHIN CROSSWALK - Class C
Misdemeanor
Plea: Guilty - Disposition: 10/28/2010 Guilty

HEARING

The court takes notice that the PSI contains an error at the bottom of the first paragraph which indicates the defendant was found guilty on all counts. In fact, he was found not guilty of aggravated burglary. Counsel offer sentencing recommendations. Dr. Curtis Hill is sworn in and testifies regarding his professional opinions. The defendant addresses the court.

SENTENCE PRISON

Based on the defendant's conviction of PURCH, TRANS, POSSESS, USE OF A FIREARM BY RESTRICTED PERSON a 3rd Degree Felony, the defendant is sentenced to an indeterminate term of not to exceed five years in the Utah State Prison.

Based on the defendant's conviction of POSSESSION OR USE OF A CONTROLLED SUBSTANCE a 3rd Degree Felony, the defendant is sentenced to an indeterminate term of not to exceed five years in the Utah State Prison.

COMMITMENT is to begin immediately.

To the IRON County Sheriff: The defendant is remanded to your custody for transportation to the Utah State Prison where the defendant will be confined.

SENTENCE PRISON CONCURRENT/CONSECUTIVE NOTE

All charges are concurrent.

SENTENCE RECOMMENDATION NOTE

The court recommends credit for 187 days served in jail.

SENTENCE JAIL

Based on the defendant's conviction of THREAT/USE OF DANGEROUS WEAPON IN FIGHT a Class A Misdemeanor, the defendant is sentenced to a term of 365 day(s)

Based on the defendant's conviction of THREAT/USE OF DANGEROUS WEAPON IN FIGHT a Class A Misdemeanor, the defendant is sentenced to a term of 365 day(s)

Based on the defendant's conviction of USE OR POSSESSION OF DRUG PARAPHERNALIA a Class B Misdemeanor, the defendant is sentenced to a term of 6 month(s)

Based on the defendant's conviction of PARKING, STOP OR STAND ON SIDEWALK OR WITHIN CROSSWALK a Class C Misdemeanor, the defendant is sentenced to a term of 90 day(s)

SENTENCE FINE

Charge # 2 Fine: \$4783.00
 Suspended: \$4750.00
 Surcharge: \$33.00
 Due: \$33.00

Charge # 3 Fine: \$4783.00
 Suspended: \$4750.00
 Surcharge: \$33.00
 Due: \$33.00

Charge # 4 Fine: \$9533.00
 Suspended: \$9000.00
 Surcharge: \$262.73
 Due: \$533.00

Charge # 5 Fine: \$9533.00
 Suspended: \$9000.00
 Surcharge: \$262.73
 Due: \$533.00

Charge # 6 Fine: \$1933.00
 Suspended: \$1900.00
 Surcharge: \$33.00
 Due: \$33.00

Charge # 7 Fine: \$1458.00
 Suspended: \$1425.00
 Surcharge: \$
 Due: \$33.00

Total Fine: \$32023.00
Total Suspended: \$30825.00
Total Surcharge: \$624.46
Total Principal Due: \$1198.00
 Plus Interest

Restitution remains open. The defendant is advised of the right to appeal.

RD Box 250
Draper Utah 84020

FILED
FIFTH DISTRICT COURT

FIFTH DISTRICT COURT

IRON COUNTY UTAH

EDDIE R. BOZARTH JR.

Pro Se Defendant

v.

STATE OF UTAH

Case # ~~BY~~ 101500328

Notice of Appeal.

Before the court comes EDDIE R. BOZARTH JR., Defendant, giving notice of intent to appeal and asking for the court to take the steps necessary to transmit the record to the appeals court.

Sworn and dated this Dec. 20, 2010.

Eddie R. Bozarth Jr.

Eddie R. BOZARTH Jr.

I certify that on 12/20/2010 a true and correct copy was mailed Prepaid First class mail to 80N 100 East Cedar City UT to the County Attorney.

SCANNED

1 were committed and you committed them. You have a right to a
2 preliminary hearing. You also have the right to waive your
3 preliminary hearing, but if you waive a preliminary hearing,
4 you will never have one. You will skip that step and move to
5 the next step which is the arraignment and entry of a plea and
6 your attorney says that's what you would like to do. Is that
7 correct?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Court finds the defendant is knowingly
10 and voluntarily waived his right to a preliminary hearing and
11 move defendant is bound over for arraignment on all of the
12 charges in the Information. I believe there are seven counts
13 in the Information; is that right? Seven counts. All right.
14 And you want to take care of the arraignment then today?

15 MR. ZABRISKIE: That's correct.

16 THE COURT: All right. And from what you've told me
17 your client intends to plead not guilty to Counts 1, 2, 3, 5, 6
18 and 7 but guilty to Count 4?

19 MR. ZABRISKIE: That's correct, your Honor.

20 THE COURT: All right. Then with regard to Counts 1,
21 2, 3, 5, 6 and 7, Mr. Bozarth, you understand those charges?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Do I need to read anything to you before
24 I take your plea?

25 THE DEFENDANT: No, sir.

1 THE COURT: Your attorney says you intend to plead
2 not guilty to those charges; is that correct?

3 THE DEFENDANT: Yes.

4 THE COURT: All right. The plea of not guilty is
5 entered to those six counts. Now, with regard to Count 4, your
6 attorney says you intend to plead guilty to that charge. Is
7 that correct?

8 THE DEFENDANT: That's the firearm charge?

9 MR. ZABRISKIE: Yeah.

10 THE DEFENDANT: Yes, sir, that's correct.

11 THE COURT: All right. I need to go through a
12 colloquy under Rule 11 under the Utah Rules of Criminal
13 Procedure to make sure that I'm convinced that you understand
14 what it is that you're doing and what rights you'll be waiving
15 by pleading guilty to that charge.

16 You have -- let me first make sure are you under the
17 influence of any drugs or any alcohol today?

18 THE DEFENDANT: No, sir.

19 THE COURT: Do you take any prescriptions?

20 THE DEFENDANT: No, sir.

21 THE COURT: Do you have any mental or physical
22 condition that would interfere with your ability to understand
23 and participate in this proceeding?

24 THE DEFENDANT: No, sir, not that I know of.

25 THE COURT: Have you talked to your attorney about

1 your rights and the basis of the charge in Count 4 of the
2 Information?

3 THE DEFENDANT: Yes, I have, sir.

4 THE COURT: Do you want to talk to him some more or
5 would you rather we proceed with the case now?

6 THE DEFENDANT: We may proceed.

7 THE COURT: And are you satisfied with
8 Mr. Zabriskie's representation of you in this matter so far?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Mr. Zabriskie, do you believe your client
11 understands what he's doing and understands his rights and
12 understands the nature of that charge?

13 MR. ZABRISKIE: Yes, I do.

14 THE COURT: Is there any reason I should not allow
15 him to plead guilty of that charge today?

16 MR. ZABRISKIE: No.

17 THE COURT: Mr. Little, can you state a factual basis
18 for Count 4 of the Information?

19 MR. LITTLE: Yes, I can, Judge. Simply on or about,
20 excuse me, May 30th, 2010, here in Iron County, State of Utah,
21 this defendant did have under his control a firearm and was
22 possessing that firearm and he had been convicted of a felony
23 within the last seven years. Well -- yeah, has been convicted
24 of a felony. There's no time limit on i.

25 THE COURT: Okay. Is that what happened?

1 THE DEFENDANT: Yes.

2 THE COURT: All right. That will be a sufficient
3 factual basis for the Court to accept a plea of guilty to that
4 count. You have certain rights as a defendant in a criminal
5 proceeding, including the right to be represented by an
6 attorney, and that's why Mr. Zabriskie is here assisting you.
7 You won't be giving up that right, but there will be other
8 rights you will be giving up or waiving if you plead guilty.
9 For instance, you have the right to go to trial. You have the
10 right to call witnesses to testify in your own behalf and to
11 have them compelled or forced to come into court and testify if
12 you want.

13 You also have the right to confront and cross-examine
14 the witnesses that the State calls to testify against you, but
15 if you plead guilty, you'll be giving up all of those rights.

16 Do you understand that?

17 THE DEFENDANT: Yes, I do.

18 THE COURT: You also are presumed innocent. You
19 don't have to testify or prove that you're innocent. The State
20 has a burden of proving each element of the charge against you
21 beyond a reasonable doubt before you could be convicted. That
22 means that before you can be convicted of Count 4, purchase,
23 transfer or possession or use of a firearm by a restricted
24 person, a third-degree felony, the State would be required to
25 prove beyond a reasonable doubt that on or about May 30th of

1 2010 in Iron County, Utah, you did purchase, transfer, possess,
2 use or have under your custody or control a firearm and you
3 have been convicted or are under indictment for a felony. And
4 the rest of the elements you don't intend to assert?

5 MR. LITTLE: No, just that one.

6 THE COURT: All right. The State would be required
7 to prove those elements before you could be convicted. If you
8 plead guilty, you give up the presumption of innocence and you
9 give up the right to require that the State prove those
10 elements against you beyond a reasonable doubt.

11 Do you understand that?

12 THE DEFENDANT: Yes, sir, I do.

13 THE COURT: You also have the right to a speedy
14 public trial. You have the right to a jury trial. A jury
15 would have to be composed of a panel of impartial jurors.
16 Their verdict would have to be unanimous before you could be
17 convicted, but if you plead guilty, you give up all of those
18 rights as well.

19 Do you understand that?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: You also have the right to appeal a
22 conviction, but your right to appeal a plea of guilty is much
23 more limited.

24 Do you understand that?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: All right. The maximum penalty that
2 could be imposed, if you were convicted of this offense, would
3 be zero to five years in the Utah State Prison, a fine of \$5000
4 plus an 85 percent surcharge and a \$33 court security fee, and
5 that sentence could be consecutive to any other sentence you
6 might be ordered to serve or that you might currently be
7 serving.

8 Do you have any question about the potential
9 penalties?

10 THE DEFENDANT: No, sir.

11 THE COURT: I don't know if the State has made any
12 recommendations for sentencing, but in light of what's gone on
13 so far, has the State made any recommendations -- committed to
14 make any recommendations for sentencing?

15 MR. LITTLE: No, the State has not.

16 THE COURT: All right. I anticipate that somebody
17 will make recommendations when this matter comes before me for
18 sentencing, but I don't have to follow anybody's
19 recommendations. As long as they sentence you to no more than
20 the maximum, I can sentence you to whatever I think is
21 appropriate.

22 Do you understand that?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Now, has anybody threatened you or forced
25 you in order to get you to plead guilty?

1 THE DEFENDANT: No, sir.

2 THE COURT: With the exception of any promises that
3 have been stated on the record here in court today which
4 essentially are none, has anybody promised you anything that
5 has caused you to want to plead guilty?

6 THE DEFENDANT: No, sir, just the circumstances of
7 the events.

8 MR. ZABRISKIE: He's saying that he's basing his
9 decision on the circumstances.

10 THE COURT: Okay.

11 MR. ZABRISKIE: What's alleged essentially.

12 THE COURT: But no one has promised you --

13 THE DEFENDANT: No, sir.

14 THE COURT: -- there would be any particular result
15 if you pled guilty today?

16 THE DEFENDANT: No, sir.

17 THE COURT: All right. So you're doing this of your
18 own free will?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: You've received a copy of the
21 Information?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: And do you understand the elements or
24 what the -- what constitutes Count 4, purchase, transfer,
25 possession or use of a firearm by a restricted person, a

1 third-degree felony?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: So do I need to read anything to you
4 before I take the plea?

5 THE DEFENDANT: No, sir.

6 THE COURT: All right. Do you have any questions
7 before I take your plea to that charge?

8 THE DEFENDANT: No, sir.

9 THE COURT: Mr. Little, have I adequately covered
10 Rule 11 as you understand that?

11 MR. LITTLE: I believe so, Judge, yes.

12 THE COURT: All right. Mr. Eddie Ray Bozarth, Jr.,
13 how do you plead to Count 4 of the Information which charges
14 you with the crime of purchase, transfer, possession or use of
15 a firearm by a restricted person, a third degree felony?

16 THE DEFENDANT: Guilty.

17 THE COURT: The Court finds the defendant's plea of
18 guilty to have been freely, knowingly, intelligently and
19 voluntarily made with understanding. The Court accepts the
20 plea and directs that the same be entered.

21 Now, Mr. Bozarth, you have the right to file a motion
22 to withdraw your plea of guilty at any time before sentence is
23 announced. That's the right to file the motion. You also have
24 the right to be sentenced in not less than two or more than 45
25 days. I don't know very much about Mr. Bozarth and I'm

1 Does that sound acceptable to you, Mr. Little?

2 MR. LITTLE: It does, Judge.

3 THE COURT: And how about you, Mr. Zabriskie?

4 MR. ZABRISKIE: That's fine, Judge.

5 THE COURT: All right. Then that's what we're going
6 to do. Let's do that now and then, gentlemen, if you'd come
7 back into chambers so we could talk about jury instructions.

8 (Recess taken by the Court.)

9 THE COURT: All right. Court is back on the record.
10 The time is now 35 minutes after 8:00 p.m.. And the matter
11 before the Court is State versus Eddie Ray Bozarth Junior.
12 101500328. Mr. Bozarth is here with his legal counsel, Mr.
13 Zabriskie and Mr. Zabriskie and the State is represented by
14 Mr. Little.

15 Gentlemen, I've prepared the final jury instructions,
16 instructions on the 9 through 26. Both counsel had an
17 opportunity to review those.

18 Is there any objection to those instructions,
19 Mr. Little?

20 MR. LITTLE: No.

21 THE COURT: Or Mr. Zabriskie?

22 MR. ZABRISKIE: No objection.

23 THE COURT: And I've also prepared a jury verdict
24 form which attempts to explain to the jury what they do in the
25 event they want to consider on they find that they should

1 though. There wasn't enough to weigh. It was a residue item
2 so I just scraped a little bit out of it and analyzed it.

3 Q And what was the outcome of that analysis?

4 A I determined the residue in the plastic bag to be
5 methamphetamine.

6 Q Okay. And in State's Exhibit No. 28, did you receive
7 that evidence as well?

8 A Yeah, Mr. Gurlis also received that and I took it out
9 of the evidence room, but I did not analyze this piece of
10 evidence.

11 Q Okay. And I guess there's been a question to
12 officers why wasn't that evidence tested?

13 A It's a laboratory policy when they're just trace
14 evidence, we only analyze one piece of trace-type evidence and
15 this is considered trace-type evidence.

16 THE COURT: When you say that you're holding up
17 Exhibit 28?

18 THE WITNESS: Yeah.

19 THE COURT: Thank you.

20 THE WITNESS: Yes.

21 BY MR. LITTLE:

22 Q Okay. Now, in your training and experience are you
23 familiar with drug paraphernalia?

24 A Yes.

25 Q Okay. And I assume in the course of 35 years you've

1 tough. It's awful, you know. And I really like this girl, you
2 know. I mean, I didn't want to lose her.

3 Q And where did you go after leaving her house?

4 A I went straight to Lee's house.

5 Q All right. Now, how much money did you have with you
6 or do you recall?

7 A I had a little over 40 bucks, I think.

8 Q Okay. And how was it made out?

9 A It was in rolled coins on the front seat of my car.

10 Q Okay. Now, do you recognize this State's Exhibit 1,
11 the shotgun?

12 A Yes, sir.

13 Q Where did you get that?

14 A That was over at the house. It's been over there for
15 years. I've had that since I was eight or nine years old, I
16 think.

17 Q And tell me about the gun. Prior to having it with
18 you this time, how long had it been since you'd seen that gun?

19 A I probably hadn't seen it for ten years or so.

20 Q Was there anything wrong with that gun based on your
21 recollection ten years ago?

22 A No, I hadn't even seen it. I seen it and it had a
23 jammed shell in it. It was already jammed in the thing and I
24 grabbed it and I figured hey this might be going for something.
25 We could fix it, sell it, whatever.

1 freaked out and plus her and that -- I'm not used to that.
2 People generally give me a decent amount of respect. I don't
3 know how to act when somebody is threatening to shoot me.

4 Q You parked your car; is that correct?

5 A Yes.

6 Q And you decide to go to the front door. Is this
7 approximately the same time?

8 A Yes.

9 Q And did you, in fact, go to the door?

10 A Yes, sir.

11 Q What about that gun?

12 A That gun? What do you mean -- can you be a little
13 more specific because I don't --

14 Q Why did you take the gun? It doesn't even shoot.

15 A Because I figured that might keep him from shooting
16 me. If he seen I had one, maybe he'd take me serious because
17 he hadn't taken nothing serious at all. The thing don't even
18 work, but I figured it might keep me from getting shot because
19 I figured that I was going to be attacked with his threats that
20 he had given me.

21 Q Okay. This gun. You've heard testimony to the
22 effect that this gun is not necessarily in the same condition
23 it was in on May 30th. Tell us the condition of that gun. By
24 that, would it connect? Could you lock it?

25 A I had to hold the thing by the breach to even keep it

1 the door. I go Lee. I knock again. He opens the door, looks
2 at me, recognizes me, looks at the gun and before I can do
3 anything he grabs it with both hands. My hand is still up here
4 just from knocking. He yanks me into the house trying to grab
5 at the gun.

6 Q Stop right there. Stop right there. Did you have
7 any intention of going into that house?

8 A No, sir.

9 Q Why?

10 A Because it's not my house. All I want to do is pay
11 this dude and get away from him.

12 Q Was there any reason you wanted to stay outside other
13 than you didn't want to go in someone else's house? Was it
14 safer outside?

15 A Well, yeah, I would think so. At least he's there,
16 right there, but I didn't have a choice. There was no choice
17 about it because he yanked on it when I was standing there
18 holding it and drug me right in there.

19 Q Okay. Then what happened?

20 A Then the gun opened up and pulled apart and he's
21 yelling -- right about that same time he starts yelling right
22 then call the police. Now, the thing that I'd been doing,
23 okay, one of the reasons I hadn't wanted to call the police is
24 I didn't want to have to -- I was figuring if we paid this
25 money, we're done with this dude. If we called the cops, we're

1 never done with this dude. We can never go to sleep at night,
2 you know, because we got to fear retaliation. He's a drug
3 dealer. That's what drug dealers do to instill fear in
4 everybody that's telling. And I'm telling now, I'm telling
5 everybody, you know what I mean? I'm so sick of this stuff.
6 It's ridiculous.

7 Q How did your brother die?

8 A He died by a drug dealer shooting him at a stupid
9 party because he was a piece of -- you know, I mean, he was
10 murdered.

11 Q Go on. What happened next? You're in the house.
12 You're pulled in the house.

13 A I'm in the house and they are yelling for the cops.
14 Now, I know the cops are going to be called because that girl
15 comes runnin' in with her cell phone and she started to call
16 the cops. And she's panicking. And it makes me unhappy
17 because she's panicking, but he's trying to wrestle me to the
18 ground and all that stuff so the cops are called. I don't
19 care. I surrendered. Takes me down and throws the gun on the
20 ground. It's opened up now anyway. I see he doesn't have a
21 gun. I'm no longer -- I don't feel threatened. I know he's
22 going to call the cops, the cops are going to come investigate
23 and save the day and figure this all out and the right thing is
24 going to happen.

1 A Well, he's laying on there telling me that I'm going
2 to go to prison for being in his house and he's got me now and
3 duh, duh, duh, duh, duh. He starts threatening me telling me
4 don't rat on him, don't expose his business or he'll kill me,
5 all this stuff. I mean, now I'm back to oh, no, now what I do?

6 Q Uh-huh.

7 A I guess I'm gonna -- I'm gonna to have to -- I don't
8 know what to do. I still don't know what to do with this.
9 Even up to now it's hard.

10 Q Was he yelling at anyone else, giving instruction to
11 see anybody?

12 A Yes. Well, yes, sir, he was. He was yelling at the
13 girl who -- he says get the dope and get out of the house so
14 she's running around grabbing a tray. She comes running back
15 through the kitchen and through the living room, we're laying
16 on the ground, packing a tray full of marijuana and different
17 baggies and stuff and she's gathering stuff up running out the
18 back of the house.

19 Q And what are you doing at this time?

20 A I'm laying there waiting for the cops. I'm saying
21 hey man I love this girl. I don't know why you got a -- what's
22 this all about? Why can't you just -- what is this?

23 Q When you say you love this girl, who are you talking
24 about?

25 A I'm talking about Kim.
Digitized by the Howard W. Hunter Library of the J. Reuben Clark Law School, BYU.
Machine-generated OCR, may contain errors.

1 one and they thought that was great so off they went to jail
2 and hauled me down there.

3 Q And they had your phone?

4 A Yeah, they had everything from me.

5 Q Okay. Now, we talked a little bit about you being a
6 restricted person. Isn't it true you're a restricted person
7 because of a DUI, a felony DUI?

8 A Yes, sir.

9 Q Not because of anything else?

10 A Well, I've done -- I've had a couple of crimes and
11 I've committed a few felonies. A DUI is what I originally lost
12 and I've had some substance abuse issues that I've been
13 convicted of. And I'm not real proud of myself on that.

14 Q That's all right. Isn't it true that in this
15 particular case here you've already pled guilty to having a
16 gun, more particularly that one there because you were a
17 restricted person?

18 A Yes, sir.

19 Q Why did you plead to that?

20 A Because -- well, for one I did it and there's no
21 defense to that. I'm pretty much -- I'm an honest guy. Even
22 the stuff I do, you know, I fess up and I take responsibility
23 for it, you know. I understood I was being in danger when I
24 had that and I made a mistake and that's what I did.

25 MR. ZABRYSKIE: Thank you, Judge. No further

EXHIBIT C

PROTECTED

STATE OF UTAH
ADULT PROBATION AND PAROLE
REGION 5 – CEDAR CITY A.P.&P.
2134 NORTH MAIN STREET
CEDAR CITY, UTAH 84721
Telephone: (435) 867-7605

PRESENTENCE INVESTIGATION REPORT

Date Due: 07/20/2010
Sentencing Date: 07/27/2010

JUDGE G. MICHAEL WESTFALL, FIFTH DISTRICT COURT

CEDAR CITY
(CITY)

IRON
(COUNTY)

UTAH

L. GENE MORTENSEN, INVESTIGATOR

NAME: EDDIE RAY BOZARTH JR. OFFENDER #: 132115
AKA'S: NONE PROS. ATTY: TROY LITTLE
ADDRESS: P.O. BOX 891 DEF. ATTY: RHOME D. ZABRISKIE
345 W. 3300 S. INTERPRETER: NONE
MILFORD, UT 84751 LANGUAGE: ENGLISH
BIRTH DATE: 04/24/1964 AGE: 46 CODEFENDANTS: NONE
MARITAL STATUS: MARRIED

COURT CASE	OFFENSE	PLEA	CONVICTION DATE
101500328	1 Count (s) PURCHASE-TRANSFER-POSSESSION-USE FIREARM BY RESTRICTED PERSON, THIRD DEGREE FELONY	GUILTY	06/10/10

RECOMMENDATION: It is the recommendation of Adult Probation and Parole that the defendant, Eddie Ray Bozarth Jr., be sentenced according to statute to a term of 0-5 years in the Utah State Prison and be ordered to pay a fine in the amount of \$5,000.00 plus a \$33.00 court security fee for the Third Degree Felony offense of Purchase, Transfer, Possession or Use of a Firearm by a Restricted Person.

EVALUATIVE ASSESSMENT AND PROBLEM AREAS: The defendant's LSI-R Score suggests he presents a High Risk of re-offending. The highest areas of concern are identified as being: Financial,

RECEIVED

JUL 14 2010

PAGE 2
PRESENTENCE INVESTIGATION REPORT
BOZARTH JR., EDDIE RAY

Attitude and Orientation, Leisure/Recreation, Criminal History, Alcohol/Drug Problems, Companions, and Emotional.

Financial: The defendant did not have a regular job at the time of this offence. He indicated he and his girlfriend were using food stamps and other public assistance.

Attitude/Orientation: The defendant failed to take responsibility for his actions and rationalized his behavior by blaming the victim for the crime. The defendant has a long history of anti-social behavior. He has been enrolled in several substance abuse programs and has yet to successfully complete one.

Leisure/Recreation: The defendant is not presently involved in any organized social activities nor has he been for some time.

Criminal History: Criminal history has been established as a predictor of future behavior. The more extensive history means a greater likelihood of future criminal behavior. The defendant's criminal history sets a pattern of a person who is at high risk to reoffend. His crimes start out with alcohol related offenses to drug charges and domestic violence to his current crime of physical violence with use of a fire arm.

Alcohol/Drug Problems: The defendant started using alcohol and illegal substances at a young age and has had extensive legal problems involving both types of substances. He has entered into several treatment programs but has never completed one.

Companions: It appears the defendant tends to gravitate toward other individuals involved in criminal behavior and lacks pro-social modeling opportunities or proper social skills.

Emotional/Personal: The defendant claims to have moderate to severe problems with depression. He appears to have problems with thinking errors and making logical decisions.

Education/Employment: The defendant has some vocational training, but has not applied himself in recent years. The defendant has had training in heavy equipment operation, construction supervision, and real estate sales but has not worked in any of these areas consistently in the past several years. During his most recent time in the community the defendant claimed he was helping his parents with a remodeling project and did not appear to seeking full time employment in any of the areas where he has training or expertise.

The Criminal History Matrix places the defendant in the Level IV, Crime Category J, suggesting **Intermediate Sanctions**.

OFFENSE

A. Plea Agreement: The defendant was originally charged with:

- **Count I:** Aggravated Burglary, a First Degree Felony;

PAGE 3
PRESENTENCE INVESTIGATION REPORT
BOZARTH JR., EDDIE RAY

- **Count II:** Aggravated Assault, a Third Degree Felony;
- **Count III:** Aggravated Assault, a Third Degree Felony;
- **Count IV:** Purchase, Transfer, Possession or Use of a Firearm by Restricted Person, a Third Degree Felony;
- **Count V:** Possession or Use of a Controlled Substance, a Third Degree Felony;
- **Count VI:** Possession or Drug Paraphernalia, a Class B Misdemeanor; and
- **Count VII:** Unlawful Parking (Roadway), a Class C Misdemeanor.

Pursuant to **plea negotiations**, the defendant pled guilty to:

- **Count I:** Purchase, Transfer, Possession or Use of a Firearm by Restricted Person, a Third Degree Felony.
- The remaining charges are scheduled for jury trial on August 5-6, 2010.

B. Factual Summary of Offense: The following information was taken from the Probable Cause Statement prepared by Murray Suttlemyre of the Cedar City Police Department:

On 05/30/2010, officers were called to the listed residence about an intruder with a firearm. Officers arrived and found Mr. Bozarth being restrained by the homeowner. There was a loaded 410 Shotgun lying on the floor, close to where they were. After containing the scene, the officers discovered the following facts:

- 1) The defendant entered the residence after a verbal altercation took place between he and the resident.
- 2) The defendant pointed this firearm at the male and female persons who were in the home at the time.
- 3) The defendant is a restricted person because he has been served a restraining order, signed by Judge Eves. This order shows as the defendant being served on 05/19/1999.
- 4) The defendant parked his vehicle in front of a clearly marked fire hydrant in front of the residence.

C. Defendant's Statement: The defendant provided the following handwritten statement regarding the present offense. His statement is typed verbatim, as follows:

PAGE 4
PRESENTENCE INVESTIGATION REPORT
BOZARTH JR., EDDIE RAY

"I had in my possession a .410 Shotgun. I my girlfriend and her family had been threatened by Lee Kalles who told my girl friend, Kim Bailey he was going to damage her business and send a "Doped up Indian" over to her house to hurt her and collect on some debt. I went to his house and tried to speak with him, either no one was home or no one would answer the door. So I left a note telling him to stop harrassing and threatening her. I left my name and numbers so he could contact me directly saying I would take care of it. This was on Thurs preceding the event. About 15 min later he called me threatening my life, Kim's and her childrens. He told me if he saw me or I came to his house he'd fill me full of lead. I told him okay I'd stay away I had some things to do but I would get in touch with him later.

I then went to Nevada for my memorial obligations to my brother and returned to Utah the next day. I returned to Utah retrieved my shotgun and went and spoke to Kim who told me Lee Kalles had again been calling and threatening her and her family and she was freighted and worried. So I went to his house to confront him. For my own protection I carried and possessed the firearm. I would have called the police but not knowing who Mr. Kalles' connections were and finding out that it was a drug debt from Kim I was afraid notifying the police would bring retaliation from unknown assailants whereas I thought if he "Mr. Kalles" could see reason and either drop it or allow me to pay it we could resolve this. My mistake and responsibility. I am sorry I wish I would have done this differently. I am glad though that the threats Mr. Kalles made to us and his illegal activities have been exposed. I hope it will bring safety for my girlfriend and her family."

6/26/2010

/s/ Eddie Bozarth

- D. Investigator's Comments:** The defendant's version supports the official version of the incident; however the defendant has attempted to justify the illegal act of having possession of the shotgun, claiming he needed it for his own self protection. The defendant has been allowed the opportunity to be supervised on probation and failed. He was sent to prison, paroled and failed. It seems that prison is more appropriate in this case as evident in his past failures and high risk to reoffend.
- E. Custody Status:** The defendant is incarcerated at the Iron County Jail. On the day of sentencing he will have served 40 days.

CRIMINAL HISTORY

- A. Juvenile Record:** The defendant claims to have no juvenile criminal record and there is nothing in the official court records to refute this claim.

B. Adult Record:

DATE	AGENCY	OFFENSE	DISPOSITION
01/28/1989	Nevada Highway Patrol	DUI, a Misdemeanor; Hit and Run	Found Guilty at Trial
09/25/1992	Lincoln County SO Nevada	DUI, a Misdemeanor	Convicted
08/14/1993	Nevada Highway Patrol	DUI, a Felony	

PRESENTENCE INVESTIGATION REPORT

BOZARTH JR., EDDIE RAY

02/06/1997	Beaver County SO Beaver, UT	DUI/Alcohol, a Class B Misdemeanor	Guilty – Jail 167 days – Fine \$1,200 – Bench Probation 18 mos.
10/10/1997	UHP	Leaving the Scene of an Accident, a Class C Misdemeanor	No Information Available
02/17/1998	Cedar City PD Cedar City, UT	DUI, a Misdemeanor	Guilty – Jail 30 days – Fine \$1,500 – Bench Probation 24 Mos.
08/29/1998	Kanab PD Kanab, UT	Disorderly Conduct, a Misdemeanor	Convicted, Fine \$300 – Bench Probation – 12 mos.
10/14/1998	Beaver County SO Beaver, UT	Aggravated Assault/Weapon, a Misdemeanor; Domestic Violence W/Child Present, a Misdemeanor	Dismissed Guilty, Simple Assault – Jail 30 days – Bench Probation 18 mos.
03/22/1999	Beaver County SO Beaver, UT	Assault, a Class A Misdemeanor Resisting an Officer, a Misdemeanor Disorderly conduct, a Misdemeanor	Guilty – Jail 12 Mos. Guilty – Jail 6 mos. suspended. Guilty - Jail 90 days suspended
05/12/1999	Beaver County SO Beaver, UT	Attempted Assault by a Prisoner, a Class A Misdemeanor	Convicted – Jail 12 mos.
12/23/1999	Cedar City PD Cedar City, UT	Disorderly Conduct, a Class B Misdemeanor	Disposition Unknown
12/02/2002	St. George PD St. George, UT	Retail Theft, a Misdemeanor	Disposition Unknown
12/05/2002	St. George PD St. George, UT	Obstructing Police a Misdemeanor Disorderly conduct, a Misdemeanor	Disposition Unknown Disposition Unknown
12/19/2002	Washington County SO Washington Co, UT	Burglary, a Felony DUI, a Third Degree Felony Interfere W/Officers, a Misdemeanor Disorderly Conduct, a Misdemeanor Leaving the Scene of and an Accident, a Misdemeanor	Convicted of Felony DUI Convicted of Attempted Assault of a Prisoner –Jail 1 year.
07/06/2004	St. George PD St. George, UT	Disorderly Conduct, a Misdemeanor	Disposition Unknown
10/03/2004	Washington County SO Washington Co, UT	Contraband into a Correctional Facility, a Third Degree Felony Possession of Drug Paraphernalia, a Misdemeanor	Guilty – Prison 0-5 years USP
06/05/2008	Utah State Prison	Possession of Controlled Substance, Felony	Disposition Unknown
6/10/2010	Cedar City PD. Cedar City, UT	1 Count (s) Purch-Transfer-Poss-Use Firearm, a 3 rd Degree Felony.	PRESENT OFFENSE. SENTENCE PENDING.

C. Pending Cases: The following charges associated with the current case are still unresolved and have been set for jury trial: Aggravated Burglary, a First Degree Felony; Aggravated Assault, a Third Degree Felony; Aggravated Assault, a Third Degree Felony; Possession or Use of a Controlled Substance, a Third Degree Felony; Possession or Drug Paraphernalia; and Unlawful Parking (Roadway), a Class C Misdemeanor.

PAGE 6
PRESENTENCE INVESTIGATION REPORT
BOZARTH JR., EDDIE RAY

D. Gang Affiliation: The defendant indicates he has no gang ties or affiliation. There is nothing in the public record to refute this.

E. Probation/Parole History: The defendant has been on one form of supervision or another since his first offence in Utah dating back to 1997. His first supervised probation with Adult Probation and Parole ran from December 17, 1997 until August 18, 1999 and was terminated unsuccessfully. He was paroled June 8, 2004 and remained on parole until August 1, 2005 when he was returned to prison on a new commitment. The defendant next paroled on April 4, 2006 but was returned to the Utah State Prison on December 26, 2006. This parole lasted about eight months. The defendant next paroled July 10, 2007 and was returned to prison on January 4, 2008. The defendant's parole lasted only six months before he committed violations and was returned to prison. The defendant next paroled in April of 2008 and was returned to prison about five weeks later. The defendant was discharged from the Department of Corrections on November 17, 2009 and committed his current offence in June of 2010. The defendant appears to have established a pattern of shorter and shorter periods where he remains free from criminal behavior. He engages in serious thinking errors and attempts to justify the criminal acts he commits.

VICTIM IMPACT STATEMENT AND RESTITUTION: A Crime Victims Restitution Sheet and cover letter were sent to the victim, on June 2, 2010 by Jessica Roy of the Iron County Attorney's Office. As of this writing no response has been received. I placed a call to Jessica Roy of the Iron County Attorney's Office on June 29, 2010. She indicated a letter and restitution forms had been sent out to the victim, but nothing had been returned to their office.

DEFENDANT'S LIFE HISTORY AND CURRENT LIVING SITUATION: The defendant was born on April 24, 1964, in Las Vegas, Nevada to the union of Eddie Ray Bozarth Sr. and Jackie Bozarth. The defendant is the oldest of four children born to this union. He was primarily raised in Las Vegas during his youth. He states he did not encounter any particular problems growing up and indicates he grew up in a middle-income economic environment. He stated his childhood was very good and his family was quite close, getting along well with his parents and siblings. He reports his relationship with his family has remained good. He reports leaving home just after graduating from high school to be on his own. He moved back to Nevada for a short time before moving to Milford, Utah.

The defendant reports working with the Union Pacific Railroad for a while and reports he eventually became a foreman. He indicated he obtained experience operating heavy equipment and is a licensed operator. He indicated he left the railroad to work construction.

The defendant married his first wife in 1989; however the marriage ended in divorce in 1994. He married his second wife in 1998. This marriage also ended in divorce a year later. The defendant has assisted with some community organization such as the Little League program and a motorcycle club. In 2002 the defendant married his third wife; however they separated when he was sentenced to serve time at the Utah State Prison. He indicated they are still legally married but have been separated for several years.

PAGE 7
PRESENTENCE INVESTIGATION REPORT
BOZARTH JR., EDDIE RAY

EDUCATION, EMPLOYMENT AND FINANCIAL INFORMATION: The defendant indicated he graduated from Lincoln County High School in Lincoln Count Nevada 1982. He claims he went to Key Real Estate School in Las Vegas. He was employed with the Union Pacific Railroad in Milford, Utah and claims he worked his way up to foreman prior to going to work as a heavy equipment operator in the construction field. At the time of his arrest on the current offence he was helping his parents with a building project on their home. The defendant indicated he had prior employment with several general engineering construction companies including Western States, Rinker, and Gilbert Development. The defendant stated he would like to study computers, drafting and science. The defendant indicated he currently has debts in the amount of \$1,000.00 and has past due bills for his cell phone. He stated he has issued bad checks in the past. He indicated he is not presently accepting any government assistance.

Private Insurance Provider? **No**

SUBSTANCE ABUSE HISTORY: The defendant indicated he first used alcohol at the age of twelve. The defendant admits to having a substance abuse problem primarily with alcohol wherein, he has had several alcohol/driving offences. He has entered into substance abuse treatment programs in the past but has never completed a program. The defendant claims he has been in so many programs that he could teach the material.

The defendant claims the only illicit drugs he has experimented with have been marijuana and methamphetamine. He has had criminal charges in the past related to the use of methamphetamine.

The defendant believes his substance abuse problems stem from his mental and emotional problems and would like help in those areas.

COLLATERAL CONTACTS: The defendant did not provide the names of any person to contact.

Respectfully Submitted,



L. GENE MORTENSEN, INVESTIGATOR

Approved,



ALLEN JULIAN, SUPERVISOR

Attachments: Criminal History Matrix

FORM 1 - GENERAL MATRIX CRIMINAL HISTORY ASSESSMENT

These are guidelines only. They do not create any right or expectation on behalf of the offender.
Matrix time frames refer to imprisonment only. Refer to the categorization of offenses.
Capital offenses are not considered within the context of the sentencing guidelines.

PRIOR FELONY CONVICTIONS
(SEPARATE CRIMINAL CONVICTIONS)

- 0 NONE
- 2 ONE
- 4 TWO
- 6 THREE
- 8 MORE THAN THREE

VIOLENCE HISTORY
(PRIOR JUVENILE OR ADULT CONVICTION
FOR AN OFFENSE WHICH INCLUDES USE
OF A WEAPON, PHYSICAL FORCE,
THREAT OF FORCE, OR SEXUAL ABUSE)

- 0 NONE
- 1 MISDEMEANOR
- 2 3rd DEGREE FELONY
- 3 2nd DEGREE FELONY
- 4 1ST DEGREE FELONY

PRIOR MISDEMEANOR CONVICTIONS
(SEPARATE CRIMINAL CONVICTIONS)
(INCLUDES DUI & RECKLESS)
(EXCLUDES OTHER TRAFFIC)

- 0 NONE
- 1 ONE
- 2 TWO TO FOUR
- 3 FIVE TO SEVEN
- 4 MORE THAN SEVEN

WEAPONS USE IN CURRENT OFFENSE
(ONLY WHEN CURRENT CONVICTION
DOES NOT REFLECT WEAPON USE OR
WHEN STATUTORY ENHANCEMENT IS
NOT INVOLVED)

- 0 NONE
- 1 CONSTRUCTIVE POSSESSION
- 2 ACTUAL POSSESSION
- 3 DISPLAYED OR BRANDISHED
- 4 ACTUAL USE
- 6 INJURY CAUSED

PRIOR JUVENILE ADJUDICATIONS
(ADJUDICATIONS FOR OFFENSES THAT
WOULD HAVE BEEN FELONIES IF
COMMITTED BY AN ADULT)(THREE
MISDEMEANOR ADJUDICATIONS EQUAL
ONE FELONY ADJUDICATION)

- 0 NONE
- 1 ONE
- 2 TWO TO FOUR
- 3 MORE THAN FOUR
- 4 SECURE PLACEMENT

TOTAL SCORE: 12

SUPERVISION HISTORY
(ADULT OR JUVENILE)

- 0 NO PRIOR SUPERVISION
- 1 PRIOR SUPERVISION
- 2 PRIOR RESIDENTIAL PLACEMENT
- 3 PRIOR REVOCATION
- 4 ACT OCCURED WHILE UNDER CURRENT
SUPERVISION OR PRE-TRIAL RELEASE

SUPERVISION RISK
(ADULT OR JUVENILE)

- 0 NO ESCAPES OR ABSCONDINGS
- 1 FAILURE TO REPORT (ACTIVE OFFENSE) OR
OUTSTANDING WARRANT
- 2 ABSCONDED FROM SUPERVISION
- 3 ABSCONDED FROM RESIDENTIAL PROGRAM
- 4 ESCAPED FROM CONFINMENT

CRIMINAL HISTORY ROW	
V	16+
IV	12 - 15
III	8 - 11
II	4 - 7
I	0 - 3

CRIME CATEGORY

	A	B	C	D	E	F	G	H	I	J	K
	1st Degree Murder	2nd Degree Murder	1st Degree Person	3rd Degree Death	1st Degree Other	2nd Degree Person	3rd Degree Person	2nd Degree Other	2nd Degree Possession	3rd Degree Other	3rd Degree Possession
V	24 YRS	8 YRS	10 YRS	48 MOS	84 MOS	60 MOS	36 MOS	30 MOS	20 MOS	20 MOS	18 MOS
IV	22 YRS	7 YRS	9 YRS	42 MOS	78 MOS	48 MOS	30 MOS	24 MOS	18 MOS	16 MOS	16 MOS
III	20 YRS	6 YRS	8 YRS	36 MOS	72 MOS	42 MOS	24 MOS	20 MOS	16 MOS	12 MOS	12 MOS
II	18 YRS	5 YRS	7 YRS	30 MOS	66 MOS	30 MOS	20 MOS	18 MOS	14 MOS	10 MOS	10 MOS
I	16 YRS	4 YRS	6 YRS	20 MOS	60 MOS	24 MOS	18 MOS	16 MOS	12 MOS	9 MOS	8 MOS

CONSECUTIVE ENHANCEMENTS: 40% of the shorter sentence is to be added to the full length of the longer sentence.
CONCURRENT ENHANCEMENTS: 10% of the shorter sentence is to be added to the full length of the longer sentence.

	ACTIVE CONVICTIONS	CRIME CATEGORY	TIME
MOST SERIOUS	Purchase, Transfer, Possession or Use of a Firearm by a Restricted Person.		18
NEXT MOST SERIOUS			
OTHER			
OTHER			

TOTAL: 18

OFFENDER NAME: Eddie Ray Bozarth Jr. **DATE SCORED:** 6/29/2010 **SCORER'S NAME:** L. Gene Mortensen

Revised: 11/2009

FORM 2
AGGRAVATING AND MITIGATING CIRCUMSTANCES

(Use Form 4 for Sex Offenses with Three Alternative Minimum Lengths of Stay)

Note any aggravating or mitigating circumstances that may justify departure from the guidelines by entering the page number of the presentence report where the court can find supporting information.

This list of aggravating and mitigating factors is non-exhaustive and illustrative only.

Aggravating Circumstances

Only use aggravating circumstances if they are not an element of the offense.

PSI Page #

- | | | |
|-------|-----|---|
| 3,4 | 1. | Established instances of repetitive criminal conduct. |
| _____ | 2. | Multiple documented incidents of violence not resulting in conviction. (Requires court approved stipulation.) |
| 3,4 | 3. | Offender presents a serious threat of violent behavior. |
| _____ | 4. | Victim was particularly vulnerable. |
| _____ | 5. | Injury to person or property loss was unusually extensive. |
| _____ | 6. | Offense was characterized by extreme cruelty or depravity. |
| _____ | 7. | There were multiple charges or victims. |
| 4 | 8. | Offender's attitude is not conducive to supervision in a less restrictive setting. |
| _____ | 9. | Offender continued criminal activity subsequent to arrest. |
| _____ | 10. | Sex Offenses: Correction's formal assessment procedures classify as a high risk offender. |
| _____ | 11. | Offender was in position of authority over victim(s). |
| _____ | 12. | Financial crime or theft crime involved numerous victims, an exploitation of a position of trust, a substantial amount of money, or receipt of money from sources including, but not limited to, equity in a person's home or a person's retirement fund. |
| _____ | 13. | Offender occupied "position of trust" in relation to murder/homicide victim(s) (U.C.A. 76-3-406.5(2)). |
| _____ | 14. | Offense constitutes a "hate crime" in that it is likely to incite community unrest; cause community to reasonably fear for physical safety or freely exercise constitutionally secured rights (U.C.A. 76-3-203.4) |
| _____ | 15. | Violence committed in the presence of a child. |
| _____ | 16. | Other (Specify) _____ |

Mitigating Circumstances

- | | | |
|-------|-----|---|
| _____ | 1. | Offender's criminal conduct neither caused nor threatened serious harm. |
| _____ | 2. | Offender acted under strong provocation. |
| _____ | 3. | There were substantial grounds to excuse or justify criminal behavior, though failing to establish a defense. |
| _____ | 4. | Offender is young. |
| _____ | 5. | Offender assisted law enforcement in the resolution of other crimes. |
| _____ | 6. | Restitution would be severely compromised by incarceration. |
| _____ | 7. | Offender's attitude suggests amenability to supervision. |
| _____ | 8. | Offender has exceptionally good employment and/or family relationships. |
| _____ | 9. | Imprisonment would entail excessive hardship on offender or dependents. |
| _____ | 10. | Offender has extended period of arrest-free street time. |
| _____ | 11. | Offender was less active participant in the crime. |
| _____ | 12. | All offenses were from a single criminal episode. |
| _____ | 13. | Offense(s) was "possession only" drug offense.(see "possession only" offenses, Addendum B) |
| _____ | 14. | Offender has completed or has nearly completed payment of restitution. |
| _____ | 15. | Other (Specify) _____ |

Days of Jail Credit 40

Guidelines Recommendation Intermediate Sanctions

AP&P Recommendations Prison

Reason for Departure The defendant has not been able to successfully complete probation or parole i

OFFENDERS NAME: Eddie Ray Bozarth Jr.

SCORERS NAME: L. Gene Mortensen

DATE SCORED: 6/29/2010

Revised: 11/2009

STATE OF UTAH
ADULT PROBATION AND PAROLE
REGION 5 – CEDAR CITY A.P.&P.
2134 NORTH MAIN STREET
CEDAR CITY, UTAH 84721
Telephone: (435) 867-7605

*How do I find
out if someone
is a dealer or
has been or is
licensed?*

PRE-SENTENCE MEMORANDUM

TO: G. MICHAEL WESTFALL

FROM: L. GENE MORTENSEN, PROBATION OFFICER
ADULT PROBATION AND PAROLE, CEDAR CITY
DEPARTMENT OF CORRECTIONS

DATE: 12/08/2010

OFFENDER #: 198139

RE: EDDIE RAY BOZARTH JR.

CASE #: 5TH DISTRICT COURT – CASE #101500328

Per the request of Judge G. Michael Westfall:

Prior Adjudication: On June 10, 2010 the defendant, Eddie Ray Bozarth Jr., entered a guilty plea on Count Four of the Information filed by the Office of the Iron County Attorney, wherein the defendant was charged with Purchase, Transportation, Possession or Use of a Firearm by a Restricted Person. He entered not guilty pleas to the remaining six charges on the Information. The defendant took the case to trial on the remaining charges and on October 28, 2010 was found guilty as charged on all counts.

Custody Status: The defendant has been incarcerated at the Iron County Jail since the date of his initial arrest on May 30, 2010. On the date of sentencing he will have been incarcerated for 187 days. The Iron County Jail staff indicated the defendant has been a good prisoner and has had no write ups during his stay in their facility.

Official Version of the Current Charges: On May 30, 2010 officers of the Cedar City Police Department responded to the report of a burglary in progress at 304 North 100 East, Cedar City, Utah. Officers Suttlemyre and Medina approached the residence and saw a female run outside of the residence waving her arms. The female appeared to be quite hysterical. She directed the officers inside the residence and told them the subject had a gun with him. As the officers entered the residence they saw two male subjects inside the residence on the floor. One of the

1

RECEIVED

DEC 08 2010

810
jr

subjects appeared to be restraining the other subject. Officer Suttlemyre saw a rifle lying on the floor near both of the subjects. The breach of the weapon was open. Officers Medina and Suttlemyre began giving the subjects commands; one of the subjects, later identified as the defendant, began telling the officers he is the one who brought the gun in. Both subjects were searched and placed in handcuffs for officer safety. One of the subjects, Mr. Kalles, told the officers the defendant had come into his residence with a rifle.

Both subjects were secured and taken out of the residence. Officer Suttlemyre read the defendant his Miranda rights and then asked the defendant if he was willing to speak about the incident. He, the defendant, indicated he did not want to talk to the officers. The defendant was taken to the Iron County Jail and booked.

Officer Chappell of the Cedar City Police Department arrived on the scene to process the crime scene. The weapon was found on the floor. Officer Chappell photographed the weapon then examined it. It was a single shot .410 shotgun with the breach open and a round in the chamber. Officer Chappell removed the round from the chamber and observed that the round appeared to have been modified. Officer Chappell secured the weapon in the trunk of his patrol vehicle and proceeded to assist in the search of the defendant's vehicle which was illegally parked next to a fire hydrant. Inside the vehicle the officers found additional rounds of .410 ammunition, a can of gun powder, a pair of night vision goggles, some rolled coin, a light bulb that had been modified into a pipe, a book on chemistry, and a small plastic bag with a white crystalline residue consistent with methamphetamine. Officers also found a package containing 100 small zip lock bags of the type used to package illegal drugs.

Officer K. Carpenter of the Cedar City Police Department arrived on scene to assist officer Chappell. Officer Carpenter examined the .410 shotgun shell that had been in the chamber of the weapon and determined it had been modified. The #5 shot had been removed from the round and replaced with ball bearings about the size of the shotgun bore. Officer Carpenter indicated he believes the modifications were made to produce maximum casualty.

The officers interviewed Richard Lee Kalles who indicated he was in the kitchen making some food when he heard a loud bang at his front door. He ran into the front room to see what was going on and observed the defendant standing in the front room and pointing a rifle at him. Kalles indicated he grabbed the rifle and started wrestling with the defendant over the rifle. In the process the rifle was thrown to the ground and breach opened so the gun could not be fired. Kalles kept the defendant restrained until the officers from the police department arrived.

Kalles claimed Kimberly Bailey owed him \$200.00 which he has been trying to collect. He indicated the defendant came by his house on May 29, 2010 and left a note on his door which said: "Lee Do Not Threaten or Harass Her Any More OR I will TAKE Care of it" Signed Eddie Bozarth. The note had two phone numbers on it and the wording: "Any Time or Place."

The officers interviewed Margaret K. Vose. She indicated she was in the kitchen when Kalles went into the front room to see what the noise was about. She said that when he reached the front door Kalles yelled for her to call 911, which she did. Vose observed as Kalles wrestled the defendant to the floor and restrained him awaiting the arrival of the police.

DEFENDANTS STATEMENT: "I have already stated many times I did what I believed had the least danger of escalation of the danger to my Girlfriend Kim and her children as I could think of. Calling the cops or doing nothing both weren't at the time choices which would allow Mr. Kalles to reevaluate and compromise or change his approach. His unreasonableness is and was then the danger. How dangerous, well, imminent to the point of requiring me to take steps to resolve the threats to my Girl and others even if I had to expose myself to Prison, death, law trouble etc. I'd call that immement and justified and in protiction of someones life. All constitutionally protected behavior. Under 26-2-401 and 76-2-402 "any conduct necessary" to protect the life of myself or someone else that "I" the one there and in the situation believe or know to be imminant is "Justified." HAD I'd known he'd call the Police, I would have, but if I had it would have done this. As far as the drug charges, don't know how they or it or whatever got there, maybe a real investigation would have found out, had they searched the house like my car. I don't and Haven't denied responsibility for my actions. I do believe it or rather they were justified. And so far I think I made the right choice. I put myself in Danger to get a Danger Resolved for other people, no one got hurt or killed Mr. Kalles now is exposed for what he is and I made a sacrifice of myself to cause this to happen. Could it have went better, yes and I gave it a chance to as I could best calculate. My family needs me, society needs me, and I need out of here and where I belong standing up for whats right, doing something about whats wrong.

Truly
Eddie Bozarth"

PSYCHOLOGICAL ASSESSMENT: On November 23, 2010 Dr. Curtis Hill, Ph.D. conducted an interview and series of psychological tests with the defendant including a Wechsler Adult Intelligence Scale, the Beck Depression Inventory, the Minnesota Multiphasic Personality Inventory, Draw a Person Test and the Incomplete Sentences Blank. Dr. Hill felt the defendant was straight forward and sincere in his statements during the interview. Dr. Hill indicated the defendant kind of made a game of the Wechsler Adult Intelligence Scale and apparently did not complete the entire test but did show a high vocabulary and demonstrated a higher than average IQ score. Dr. Hill portrays the defendant as being somewhat impulsive, a risk taker, one who places a high value on friends and family, being somewhat lacking in patience, having problems with concentration similar to individuals with Attention Deficit Hyperactive Disorder. Dr. Hill also indicated the defendant showed signs similar to individuals with Post Traumatic Stress Disorder. He said the defendant also tends to be overly self reliant and in this case it was probably to his detriment. Dr. Hill categorized the defendant as having a fairly normal personality.

Dr. Hill appears to suggest that the defendant acted based up on his perceptions which may have been influenced by the death of his brother at the hands of a drug dealer and the defendant's feelings of guilt for not being able to intervene.

EVALUATIVE SUMMARY: In completing the initial Presentence Investigation Report and in subsequent interviews with the defendant, I sense that he truly believes in his own mind that he was justified in doing what he did with the belief that his girlfriend and her family were in emanate danger and did so with knowledge of the possible outcomes and consequences of his

actions. It is my opinion that the defendant felt like what he did was worth the outcome and that he is willing to accept the responsibility for his actions towards the victim. The defendant continues to minimize his responsibility for having possession of drugs, for having possession of a fire arm and ammunition, and for modifying the shotgun rounds to increase the lethal effect.

The defendant's LSI-R Score suggests he presents a **High Risk** of re-offending. The highest areas of concern are identified as being: Financial, Attitude and Orientation, Leisure/Recreation, Criminal History, Alcohol/Drug Problems, Companions, Emotional/Personal, and Education/Employment.

Financial: The defendant did not have a regular job at the time of this offence. He indicated he and his girlfriend were using food stamps and other public assistance.

Attitude/Orientation: The defendant failed to take responsibility for his actions and rationalized his behavior by blaming the victim for the crime. The defendant has a long history of anti-social behavior. He has been enrolled in several substance abuse programs and has yet to successfully complete one.

Leisure/Recreation: The defendant is not presently involved in any organized social activities nor has he been for some time.

Criminal History: Criminal history has been established as a predictor of future behavior. The more extensive history means a greater likelihood of future criminal behavior. The defendant's criminal history sets a pattern of a person who is at high risk to reoffend. His crimes start out with alcohol related offenses to drug charges and domestic violence to his current crime of physical violence with the use of a fire arm.

Alcohol/Drug Problems: The defendant started using alcohol and illegal substances at a young age and has had extensive legal problems involving both types of substances. He has entered into several treatment programs but has never completed one.

Companions: It appears the defendant tends to gravitate toward other individuals involved in criminal behavior that lack pro-social modeling opportunities or proper social skills.

Emotional/Personal: The defendant claims to have moderate to severe problems with depression. He appears to have problems with thinking errors and making logical decisions.

Education/Employment: The defendant has some vocational training, but has not applied himself in recent years. The defendant has had training in heavy equipment operation, construction supervision, and real estate sales but has not worked in any of these areas consistently in the past several years. During his most recent time in the community the defendant claimed he was helping his parents with a remodeling project and did not appear to be seeking full time employment in any of the areas where he has training or expertise.

The Criminal History Matrix places the defendant in the Level IV, Crime Category J and K, suggesting **Intermediate Sanctions**.

COLLATERAL CONTACTS: Adult Probation and Parole received two letters written in the defendant's behalf and addressed to the Fifth District Court; one from Kimberly Bailey, the girlfriend of the defendant, and one from Seana Bailey, Kimberley Bailey's daughter. These are included as attachments to this report. There is also a Psychological Evaluation completed by Curtis Hill, Ph.D. attached herewith.

RECOMMENDATION: It is the recommendation of Adult Probation and Parole that the defendant, Eddie Ray Bozarth Jr., be sentenced according to statute to a term of 0-5 years in the Utah State Prison and be ordered to pay a fine in the amount of \$5,000.00 for the Third Degree Felony offense of Purchase, Transfer, Possession, Use of a Firearm by a Restricted Person.


It is the recommendation of Adult Probation and Parole that the defendant, Eddie Ray Bozarth Jr., be sentenced according to statute to a term of 0-5 years in the Utah State Prison and be ordered to pay a fine in the amount of \$5,000.00 for the Third Degree Felony offense of Possession or Use of a Controlled Substance.

It is the recommendation of Adult Probation and Parole that the defendant, Eddie Ray Bozarth Jr., be sentenced to serve one year in the Iron County Jail and be ordered to pay a fine in the amount of \$2,500.00 for each Class A Misdemeanor offense of Threat/Use of a Dangerous Weapon in a Fight (2 Counts).

It is the recommendation of Adult Probation and Parole that the defendant, Eddie Ray Bozarth Jr., be sentenced to serve six months in the Iron County Jail and be ordered to pay a fine in the amount of \$1,000.00 for the Class B Misdemeanor offense of Possession of Drug Paraphernalia.


It is the recommendation of Adult Probation and Parole that the defendant, Eddie Ray Bozarth Jr., be sentenced to serve 90 days in the Iron County Jail and be ordered to pay a fine in the amount of \$750.00 for the Class C Misdemeanor offense of Parking, Stop or Stand on Sidewalk or Within Crosswalk.

Respectfully Submitted,



L. GENE MORTENSEN, PROBATION OFFICER

Approved,



ALLEN JULIAN, SUPERVISOR

Attachments: Criminal History Matrix
Psychological Assessment

Letter from Kimberly Bailey
Letter from Seana Bailey

FORM 1 - GENERAL MATRIX

CRIMINAL HISTORY ASSESSMENT

These are guidelines only. They do not create any right or expectation on behalf of the offender.
Matrix timeframes refer to imprisonment only. Refer to the categorization of offenses.
Capital offenses are not considered within the context of the sentencing guidelines.

PRIOR FELONY CONVICTIONS
(SEPARATE CRIMINAL CONVICTIONS)

- 0 NONE
- 2 ONE
- 4 TWO
- 6 THREE
- 8 MORE THAN THREE

PRIOR MISDEMEANOR CONVICTIONS
(SEPARATE CRIMINAL CONVICTIONS)
(INCLUDES DUI & RECKLESS)
(EXCLUDES OTHER TRAFFIC)

- 0 NONE
- 1 ONE
- 2 TWO TO FOUR
- 3 FIVE TO SEVEN
- 4 MORE THAN SEVEN

PRIOR JUVENILE ADJUDICATIONS
(ADJUDICATIONS FOR OFFENSES THAT
WOULD HAVE BEEN FELONIES IF
COMMITTED BY AN ADULT) (THREE
MISDEMEANOR ADJUDICATIONS EQUAL
ONE FELONY ADJUDICATION)

- 0 NONE
- 1 ONE
- 2 TWO TO FOUR
- 3 MORE THAN FOUR
- 4 SECURE PLACEMENT

SUPERVISION HISTORY
(ADULT OR JUVENILE)

- 0 NO PRIOR SUPERVISION
- 1 PRIOR SUPERVISION
- 2 PRIOR RESIDENTIAL PLACEMENT
- 3 PRIOR REVOCATION
- 4 ACT OCCURRED WHILE UNDER CURRENT
SUPERVISION OR PRE-TRIAL RELEASE

SUPERVISION RISK
(ADULT OR JUVENILE)

- 0 NO ESCAPES OR ABSCONDINGS
- 1 FAILURE TO REPORT (ACTIVE OFFENSE) OR
OUTSTANDING WARRANT
- 2 ABSCONDED FROM SUPERVISION
- 3 ABSCONDED FROM RESIDENTIAL PROGRAM
- 4 ESCAPED FROM CONFINEMENT

VIOLENCE HISTORY
(PRIOR JUVENILE OR ADULT CONVICTION
FOR AN OFFENSE WHICH INCLUDES USE
OF A WEAPON, PHYSICAL FORCE,
THREAT OF FORCE, OR SEXUAL ABUSE)

- 0 NONE
- 1 MISDEMEANOR
- 2 3rd DEGREE FELONY
- 3 2nd DEGREE FELONY
- 4 1st DEGREE FELONY

WEAPONS USE IN CURRENT OFFENSE
(ONLY WHEN CURRENT CONVICTION
DOES NOT REFLECT WEAPON USE OR
WHEN STATUTORY ENHANCEMENT IS
NOT INVOLVED)

- 0 NONE
- 1 CONSTRUCTIVE POSSESSION
- 2 ACTUAL POSSESSION
- 3 DISPLAYED OR BRANDISHED
- 4 ACTUAL USE
- 6 INJURY CAUSED

TOTAL SCORE: 14

CRIMINAL HISTORY ROW	
V	16+
IV	12 - 15
III	8 - 11
II	4 - 7
I	0 - 3

CRIME CATEGORY

		A	B	C	D	E	F	G	H	I	J	K
		1st Degree Murder	2nd Degree Death	1st Degree Person	3rd Degree Death	1st Degree Other	2nd Degree Person	3rd Degree Person	2nd Degree Other	2nd Degree Possession	3rd Degree Other	3rd Degree Possession
CRIMINAL HISTORY	V	24 YRS	8 YRS	10 YRS	48 MOS	84 MOS	60 MOS	36 MOS	30 MOS	20 MOS	20 MOS	10 MOS
	IV	22 YRS	7 YRS	9 YRS	42 MOS	78 MOS	48 MOS	30 MOS	24 MOS	18 MOS	18 MOS	16 MOS
	III	20 YRS	6 YRS	8 YRS	36 MOS	72 MOS	36 MOS	24 MOS	20 MOS	16 MOS	12 MOS	12 MOS
	II	18 YRS	5 YRS	7 YRS	30 MOS	66 MOS	30 MOS	20 MOS	18 MOS	14 MOS	10 MOS	10 MOS
	I	16 YRS	4 YRS	6 YRS	20 MOS	60 MOS	24 MOS	18 MOS	16 MOS	12 MOS	9 MOS	8 MOS
		Imprisonment										
		Intermediate Sanctions										
		Regular Probation										

CONSECUTIVE ENHANCEMENTS: 40% of the shorter sentence is to be added to the full length of the longer sentence.

CONCURRENT ENHANCEMENTS: 10% of the shorter sentence is to be added to the full length of the longer sentence.

	ACTIVE CONVICTIONS	CRIME CATEGORY	TIME
MOST SERIOUS	Poss of a Firearm by a Restricted Person a 3rd Deg Felony	J	18
NEXT MOST SERIOUS	Poss of Controlled Substance a 3rd Deg Felony	K	2
OTHER			
OTHER			
TOTAL			

OFFENDER NAME: Eddie Ray Bozarth DATE SCORED: 12/6/2010 SCORER'S NAME: L. Gene Mortensen

Revised: 6/2005

Form 2
AGGRAVATING AND MITIGATING CIRCUMSTANCES

(Use Form 4 for Sex Offenses with Three Alternative Minimum Lengths of Stay)

Note any aggravating or mitigating circumstances that may justify departure from the guidelines by entering the page number of the presentence report where the court can find supporting information.

This list of aggravating and mitigating factors is non-exhaustive and illustrative only.

Aggravating Circumstances

Only use aggravating circumstances if they are not an element of the offense.

PSI Page #

- ☒ 1. Established instances of repetitive criminal conduct.
- ☐ 2. Multiple documented incidents of violence not resulting in conviction. (Requires court approved stipulation.)
- ☒ 3. Offender presents a serious threat of violent behavior.
- ☐ 4. Victim was particularly vulnerable.
- ☐ 5. Injury to person or property loss was unusually extensive.
- ☐ 6. Offense was characterized by extreme cruelty or depravity.
- ☒ 7. There were multiple charges or victims.
- ☒ 8. Offender's attitude is not conducive to supervision in a less restrictive setting.
- ☐ 9. Offender continued criminal activity subsequent to arrest.
- ☐ 10. Sex Offenses: Correction's formal assessment procedures classify as a high risk offender.
- ☐ 11. Offender was in position of authority over victim(s).
- ☐ 12. Financial crime or theft crime involved numerous victims, an exploitation of a position of trust, a substantial amount of money, or receipt of money from sources including, but not limited to, equity in a person's home or a person's retirement fund.
- ☐ 13. Offender occupied "position of trust" in relation to murder/homicide victim(s) (U.C.A. 76-3-406.5(2)).
- ☐ 14. Offense constitutes a "hate crime" in that it is likely to incite community unrest; cause community to reasonably fear for physical safety or freely exercise constitutionally secured rights (U.C.A. 76-3-203.4)
- ☐ 15. Violence committed in the presence of a child.
- ☐ 16. Other (Specify) _____

Mitigating Circumstances

- ☐ 1. Offender's criminal conduct neither caused nor threatened serious harm.
- ☐ 2. Offender acted under strong provocation.
- ☒ 3. There were substantial grounds to excuse or justify criminal behavior, though failing to establish a defense.
- ☐ 4. Offender is young.
- ☐ 5. Offender assisted law enforcement in the resolution of other crimes.
- ☐ 6. Restitution would be severely compromised by incarceration.
- ☐ 7. Offender's attitude suggests amenability to supervision.
- ☐ 8. Offender has exceptionally good employment and/or family relationships.
- ☐ 9. Imprisonment would entail excessive hardship on offender or dependents.
- ☐ 10. Offender has extended period of arrest-free street time.
- ☐ 11. Offender was less active participant in the crime.
- ☐ 12. All offenses were from a single criminal episode.
- ☐ 13. Offense(s) was "possession only" drug offense. (see "possession only" offenses, Addendum B)
- ☐ 14. Offender has completed or has nearly completed payment of restitution.
- ☐ 15. Other (Specify) _____

Days of Jail Credit 187

Guidelines Recommendation Intermediate Sanctions

AP&P Recommendations Prison

Reason for Departure The defendant has demonstrated his inability to be supervised in the community

OFFENDER NAME: Eddie Ray Bozarth Jr.

SCORER'S NAME: L. Gene Mortensen

DATE SCORED: 12/6/2010

Curtis Hill, Ph.D.
Psychological Services
1921 west 546 south
Cedar City, Utah 84720
435-865-8225
435-865-8055 (fax)

Psychological Assessment

Name: Eddie Bozarth

Date of Assessment: November 23, 2010

Identifying Data: Mr. Bozarth is a 46 year old male who is currently unemployed but had been looking for work prior to his current incarceration. He has worked as a heavy equipment operator, substance abuse and youth counselor, a railroad man, and in construction. He is the father of one daughter and was married for several years before divorcing in 1993. Mr. Bozarth indicated the happiest time of his adult life was when he was in this marriage. He believes that fear and self-defeating behaviors led to the end of that relationship and he regrets his failure to make needed changes.

Having a colorful past in regard to problems with the law, Mr. Bozarth has spent significant time in jail and openly admitted to having struggled with alcohol and drug issues as well as impulsive behaviors in the past. He witnessed the shooting of his younger brother, by a drug dealer, in 1987 and was present as his brother died. Mr. Bozarth continues to feel somewhat responsible for his brother's death. After struggling with establishing a consistent life direction, Mr. Bozarth reported he is in a healthy relationship with a woman he loves. He would like to see if this relationship can lead to marriage. He further feels he is coping well with substance abuse issues and is ready to take responsibility to live a more committed and secure life.

Reason for Referral

Mr. Bozarth had been recently released from prison and was trying to establish himself as a regular part of society. He was looking for work and was working with his parents to begin construction on a house which would provide work and income. He was/is also dating a woman whom he loves and would like to marry if possible. Unfortunately, Mr. Bozarth's girlfriend had been reportedly threatened by a person from whom she purchased marijuana. Mr. Bozarth indicated his girlfriend admitted to being fearful for her life and for her children after this person repeatedly threatened her for a small amount of money. Neither Mr. Bozarth nor his girlfriend had the money to pay this individual right away.

The threats reportedly increased. Mr. Bozarth indicated he felt very significant levels of distress and fear. He remembers thinking that this drug dealer could "take away the things he cares about the most". He described feelings of panic, muscle tension, trouble sleeping, and feeling scared (though he did not use this term). Further, he felt he

could not go to the police because he did not believe they could adequately protect his girlfriend and her children, and he felt the drug dealer was fully capable of carrying out the threats. After several days of feeling this distress, and further threats reported by his girlfriend as well as a direct threat to hurt or kill Mr. Bozarth, Mr. Bozarth decided to confront the drug dealer and resolve the issue (I will not give these details here since an audio transcript from the trial is very consistent with Mr. Bozarth's report during interview). It should be noted that Mr. Bozarth denied any intent to hurt anyone. His girlfriend reportedly was very upset and afraid. Mr. Bozarth felt he must do something for fear the threats would be carried out if more time elapsed, and he felt he had few other options. He remembers thinking to himself: "I will not sit by and wait for something terrible to happen if I can do something to prevent it". At this same time, he found himself thinking repeatedly of his brother's death and his failure to protect him.

Mr. Bozarth sought this assessment at the request of his attorney who believes Mr. Bozarth's behavior may have been influenced by past experience with the drug dealer who shot Mr. Bozarth's younger brother. This report will attempt to help the reader understand if the experience of seeing his brother die could reasonably have had a significant influence over how Mr. Bozarth felt and reacted to the threats directed toward his girlfriend and self. This report will also attempt to give any recommendations that may be helpful from a developmental perspective.

Techniques Used

Interview of Mr. Bozarth, partial Wechsler Adult Intelligence Scale (WAIS-III), the Beck Depression Inventory (BDI); Minnesota Multiphasic Personality Inventory-2 (MMPI-2), Draw a Person Test, The Incomplete Sentences Blank, and an audio recording of Mr. Bozarth's court testimony.

Background Given by Mr. Bozarth

Mr. Bozarth appeared to be remarkably open and straightforward as he discussed his life. Growing up in rural Nevada, Mr. Bozarth indicated his family was and is loving and supportive. He enjoyed his childhood and fondly remembers time spent with family as they traveled to various moto-cross events around the west. He described his childhood and adolescence as a happy time.

In school, Mr. Bozarth described himself as being a little rebellious and having some conflict with teachers. As he described the conflicts, it appears Mr. Bozarth may have been off-task frequently as a child and likely struggled with attention and concentration. As he grew older, Mr. Bozarth felt the conservative values of his school teachers were somewhat oppressive and that they avoided real conversations about meaningful differences or diverse views. Despite these concerns, Mr. Bozarth played sports, was involved in other extra-curricular activities, and graduated high school. It should be noted he denied ever being suspended or in any real trouble with teachers or administrators. As high school came to an end, Mr. Bozarth continued to race motorcycles and "raise a little hell" around town. He also indicated he was a hard worker and tried to be true to his word.

Mr. Bozarth indicated he has always been a thrill seeker. He tends to become bored easily and partied with friends as a teenager as a way to provide some thrills. In high school, he drank with friends on weekends. He also used marijuana, speed, and

meth occasionally (less than once a month). He admits that his drinking may have been heavy but it was consistent with peers. He justified its use by periods of abstinence when he needed to work (i.e. party on the weekend and focus on work during the week). Mr. Bozarth indicated he enjoys using substances in moderation and there seems to be something in him that needs that. It was during this time of his life that Mr. Bozarth and his brother were at a party when a local drug dealer became agitated with them during a party. The dealer left the party but returned several minutes later with a gun. He walked up to Mr. Bozarth and his brother. Mr. Bozarth believed he was going to die. However, the dealer took aim at Mr. Bozarth's brother and shot him in the neck. Mr. Bozarth still has no idea what prompted the violence.

For several years following this event, Mr. Bozarth questioned himself and appears to have obsessed over being able to stop or change the situation which took his brother's life. He experienced nightmares. Also, being the older brother, he felt a great responsibility for his brother. After this event, Mr. Bozarth remembers family life changed a great deal. Mr. Bozarth indicated the greatest changes in his own life included a pervasive fear that he would lose anything and everything he valued and cared about. It was around this time of his life that he started to notice several self-defeating behaviors including a significant increase in substance abuse.

Mr. Bozarth was married a year or two after his brother's death. They have a daughter. He struggled with substance use at that time and his wife said she would leave him if he did not stop. He said he tried and found he was happier. However, as mentioned earlier, as he turned away from the substances he found himself feeling happier and more connected to his wife and daughter. This connection also brought fear of loss. He said he struggled more and more with self-destructive behaviors and eventually was divorced. The substance abuse and other self-destructive tendencies lead to difficulties with the law.

Mr. Bozarth has been in substance abuse treatment and feels he has learned a great deal about himself. However, he would like to understand himself on a deeper level and learn to not have debilitating fear about connection with others and the inevitable loss that comes from caring for others. As we spoke he appeared to be quite genuine in his wish to resolve past issues and move forward in life. He expressed a sadness and grief about his recent behaviors and does not want to go back to prison. He also recently talked with his brother's killer in an attempt to forgive.

Current Drug and Alcohol Use

Mr. Bozarth indicated he does not seem to be able to practice abstinence with substances. He said he uses occasionally, having a few beers a week and using marijuana or speed on rare occasions (perhaps 3 times in the past year). He says he is able to focus on other things and does not feel the impulse to use to deal with common things like boredom or feeling sad. He does not use while alone.

Mr. Bozarth as Seen Through the Tests

Mr. Bozarth appeared to have some fun with the intelligence test (WAIS-III), seeing it as a challenge. He expressed few reservations about what it may show and appeared to give his best effort. Mr. Bozarth's responses demonstrated a high average knowledge of vocabulary, historical, geographical and other school related information.

He demonstrated good stamina. Results also suggest his memory is strong and that he possesses reasonably good problem solving ability and common sense. Mr. Bozarth's response pattern was somewhat impulsive and similar to individuals who struggle with attention and concentration.

On a test which asks individuals to report symptoms commonly associated with depression (**BDI**), Mr. Bozarth responded in a manner suggesting no significant feelings of sadness or distress other than feeling restless. For example, he indicated she does not typically feel sad, he does not feel he is worse off than anyone else, and he does not feel he gets more tired than he used to. His responses suggest he is feeling pretty good most of the time and has not noticed any current major difficulties. On the other hand, his responses were very positive, suggesting he may tend to minimize some common human weaknesses. It should be noted this pattern is typical when one is being assessed for a court proceeding but results are likely valid. It should also be noted that Mr. Bozarth admitted to feelings of worry and distress about his girlfriend and family during interview.

Tests to assess one's personality and emotional functioning were administered. The first test was a standardized test where one's responses are compared to well established norms derived from other individuals who struggle with psychological problems. Mr. Bozarth's responses to test items on the standardized test (**MMPI-II**) suggest a valid profile where he presented a reasonable range of psychological concerns and where he was open and accessible to discussing problems. Responses suggest Mr. Bozarth likely possesses a realistic view of self and is willing to admit problems and concerns. Overall, Mr. Bozarth's results are similar to individuals who are seen as being fairly normal. It is important to recognize that Mr. Bozarth's responses do not show a pattern typically seen with individuals who demonstrate a disregard for others or for society's norms and expectations. He is likely capable of genuine empathy and concern for others. Finally, results strongly suggest Mr. Bozarth may be in a place where he is open and willing to receive help.

Two projective tests were also administered. The **Incomplete Sentences Blank** and the **Draw a Person Test**. Results from both are quite consistent and suggest the following themes. Mr. Bozarth values being with family and friends. He tends to be engaged and interested in the world and is hopeful for a bright and productive future. At the same time, he appears to possess a realistic sense of loss and remorse for mistakes he has made in the past. Responses suggest life sometimes feels complicated and confusing and he has tended to rely on quick impulsive thinking to solve complicated problems. Patience is likely a skill Mr. Bozarth needs to better develop, and a tendency to be overly independent often does not serve him well. Finally, Mr. Bozarth appears to be aware of a fear of having others depend on him and would like to learn to live up to his abilities rather than engage in self-defeating behaviors.

I was able to listen to Mr. Bozarth's court testimony, recorded on 10/28/2010, where he describes his behaviors and thought process surrounding his arrest. From a psychological perspective, I hear an individual who is attempting to describe his thoughts and actions. He is articulate but becomes impatient and agitated as attorney's try to understand and clarify his actions and intentions. My thought was here is a man who is trying to express the intensity of his feelings (especially fear) which led to his decisions and behaviors without actually being able to effectively articulate and demonstrate the

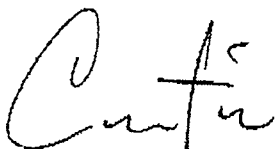
fear, the hurt, and likely sadness of the situation. He becomes frustrated when others do not seem to understand and tends to blame and justify. The testimony sounds like a man who is asking for help but lacks the skill to do so.

Conclusions

History, interview, and testing suggest Mr. Bozarth was open and honest during the evaluation process. He is intellectually bright and cares for others but lacks social grace and skill. More importantly, he likely lacks the skills needed to identify needs and wants (especially emotional needs) effectively and then meet those needs and wants efficiently. Test results and history also suggest difficulty with attention and concentration, a life-long pattern of seeking intense and thrilling events, and a tendency toward impulsive decision making. These observations are commonly seen in individuals diagnosed with Attention Deficit/ Hyperactivity Disorder (ADHD). Results further suggest a pattern similar to individuals who are open to seeking and receiving help. Mr. Bozarth's responses do not show a pattern typically seen with individuals who demonstrate a disregard for others or for society's norms and expectations

Could seeing his brother die reasonably have had a significant influence over how Mr. Bozarth felt and reacted to the threats directed toward his girlfriend and self? Interview, a detailed examination of psychological events prior to the arrest, history, and audio from the trial all suggest the threats combined with the fear of losing someone close likely triggered a significant psychological process. This process appears to have been similar to Posttraumatic Stress Disorder, where individuals who were traumatized at an earlier point in life can re-experience similar autonomic psychological and physiological distress when confronted with a similar context at a later date. The perceived threats to his own life and to those of people he loves could quite reasonably create intense feelings of fear and agitation. Further, lacking some essential insight as to how current events may have been connected to past events, and lacking skill to cope with subsequent feelings, Mr. Bozarth felt trapped and reasoned that an overreaction was better than a lack of action. It seems likely that psychological distress (crisis), as well as a lack of resources and skill, lead to clearly poor decisions.

Test results suggest Mr. Bozarth is open to receiving help and likely able to use that help constructively. Counseling which focuses on understanding the trauma of his brother's death and the developmental problems this created for Mr. Bozarth is highly recommended. Further, counseling needs to focus on adjustment issues, the development of skills to cope with agitation and impulsive decision making, and fear of connection with others.



Curtis L. Hill, Ph.D.

November 24, 2010

Iron County -- Cedar City District Court
Attn: Judge G. Michael Westfall
40 N 100 E
Cedar City, Utah 84720

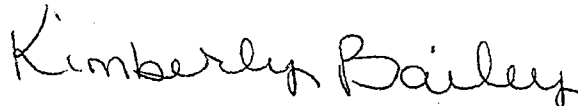
To Whom It May Concern:

Eddie was in our lives for only a short while, but the time I spent getting to know him will be forever with me. He didn't have much to give, but what he had was his energy, his smile and his love. I had no doubt about this good heart this man has because he showed it in everyday. He gained mine and my children's trust and was patient while we accepted him on our own terms.

What attracted me to Eddie was his loyalty to his family and his nature to protect the ones he loves. As we got to know one another, he saw me change from the happy upbeat woman I am to distracted and disturbed by what Lee Kallas was doing to my life. As the threats got more intense and the safety of my family was being threatened, I became angry, broke down and feared of how crazy this man was over such little debt. What kind of man would be able to sit there and watch someone they care about be tormented and tortured by threats? Eddie is not one to let harm happen so he went and let Lee know to stop. This is why he then became the victim to what Lee Kallas was doing.

This I say in hopes of sharing a part of my life that I know is true and a part I will never forget. Lee Kallas is an evil man who thinks he is god, judge and persecutor of people's lives and he is the one who should be punished. Please spare Eddie, undue punishment and allow him to learn and live his lesson he has been given so that we all may have more people like him and less like Lee Kallas.

Thank you,

A handwritten signature in cursive script that reads "Kimberly Bailey". The signature is written in dark ink and is positioned above the printed name.

Kimberly Bailey

November 24, 2010

Iron County – Cedar City District Court
Attn: Judge G. Michael Westfall
40 N 100 E
Cedar City, Utah 84720

To Whom It May Concern:

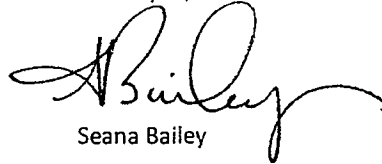
I am sending you this letter today in favor for Eddie Bozarth Jr. and the sentence date of November 30, 2010. When I first met Eddie he didn't seem to fit right with my mom or our close knit family, but that was before I even took the opportunity to understand and get to know him. After we got through the first week or so of the awkward stages I finally got to understand who Eddie Bozarth Jr. really is. Being as stereotypical as I am, Eddie is not a bad man. His past may show otherwise, but to me the past is something we have to learn from and only change/improve our present and future.

I am the one in the family that holds the most approval for anyone that mother may date because I see them for who they are and not what they are after getting to know them. Getting to know who exactly Eddie Bozarth Jr. is and what his past, present and future were looking like was an experience within itself. Seeing his love grow for my mother and my mother's acceptance of who he was had me open up my eyes, trust and heart to let this man in.

On the days before the incident regarding Lee Kallas, I didn't see much of Eddie until the day the incident happened. In my eyes, I see a man just trying to stick up for the woman he loves and trying to stop what was being said before it became real. I'm not saying showing up to a man's door with a deadly weapon is okay, there are some things that Eddie and my mother should have done differently about this issue, but just to have Eddie do something that no other man has ever done for my mom showed me that this man was truly a good man. Some people may see Eddie as the evil one that should spend a lifetime in prison, but to me I see Eddie as someone who was just trying to help the woman he loved and her family from being harmed from what this man was threatening to happen.

In conclusion, I would like to ask you to please see this letter as nothing, but good word for someone that I have allowed in my heart and trusted with not only my mother, but my brother and I. He may have taken the wrong actions to handle this situation, but I believe he sees and understands that what he did was wrong. Eddie is a good man and in the short time I knew Eddie, before this incident occurred, I saw a man that was trying to do good and improve himself for the not only himself, but the people that surrounds him.

Thank you,

A handwritten signature in black ink, appearing to read 'Seana Bailey', with a stylized, flowing script.

Seana Bailey

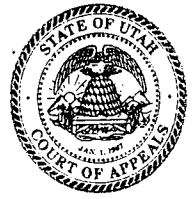
EXHIBIT D

James Z. Davis
Presiding Judge
Carolyn B. McHugh
Associate Presiding Judge
Gregory K. Orme
Judge
William A. Thorne, Jr.
Judge
J. Frederic Voros, Jr.
Judge
Stephen L. Roth
Judge
Michele M. Christiansen
Judge

Utah Court of Appeals

450 South State Street
P.O. Box 140230
Salt Lake City, Utah 84114-0230

Appellate Clerks' Office (801) 578-3900
Judges' Reception (801) 578-3950
FAX (801) 578-3999
Utah Relay 1-800-346-4128



Diane Abegglen
Appellate Court Administrator

Lisa A. Collins
Clerk of the Court

August 19, 2011

Eddie R. Bozarth Jr. 132115
Utah State Prison
PO Box 250
Draper UT 84020

RE: State v. Bozarth Jr.

Appellate Case No. 20101040

Dear Mr. Bozarth Jr.:

In response to your letter, received on August 11, 2011, our records indicate you are represented by counsel as **J BRYAN JACKSON, ATTORNEY AT LAW, 95 N MAIN ST STE 25, PO BOX 519, CEDAR CITY UT 84721** who has not filed a notice of withdrawal. The Court will only consider documents on your behalf if they are filed by your attorney. It is unclear if counsel is aware of your sending them and suggest you discuss your intention to file with your attorney. You must communicate through him regarding your appeal.

Your above letter has been forwarded to your attorney that he might respond to you and possibly give you some assistance.

All future inquiries or requests for copies of filings must be made of your attorney as we do not have the staff to provide this service.

Sincerely,

A handwritten signature in dark ink, appearing to read "Crystal Cragun".

Crystal Cragun
Judicial Assistant

cc: LAURA B DUPAIX
J BRYAN JACKSON

641 E 3005 #150
Vernal UT 84078

APPELLATE COURTS
POSTMARKED

Case # 20101040

8-11-2011

Dear Clerk;

AUG 11 2011

I need to know the Status of this case. Please do not refer me to the appointed Counsel Bryan Jackson as due to Prior Conflict of interest and his failure to respond to any of my inquiries I am terminating, or rather have terminated his assistance. I had previously informed the court of this and had wished to proceed with my first appeal written by me without Counsel so please tell me where we are at.

* Please note I have not recieved any correspondence from Bryan Jackson. Also his relationships with several adverse parties to lawsuits pending between myself and IRON Co, IRON Co Pres, etc also creates multiple conflicts. So thanks for the appointment but NO THANK YOU. Hes Fired. Proceed with my original Appeal please thank You.

Eddie Ray Bozath Jr.

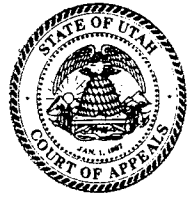
Also Mr Jackson has failed to provide an Anders Brief or the transcripts as requested by myself.

James Z. Davis
Presiding Judge
Carolyn B. McHugh
Associate Presiding Judge
Gregory K. Orme
Judge
William A. Thorne, Jr.
Judge
J. Frederic Voros, Jr.
Judge
Stephen L. Roth
Judge
Michele M. Christiansen
Judge

Utah Court of Appeals

450 South State Street
P.O. Box 140230
Salt Lake City, Utah 84114-0230

Appellate Clerks' Office (801) 578-3900
Judges' Reception (801) 578-3950
FAX (801) 578-3999
Utah Relay 1-800-346-4128



Diane Abegglen
Appellate Court Administrator

Lisa A. Collins
Clerk of the Court

August 19, 2011

J. BRYAN JACKSON
ATTORNEY AT LAW
95 N MAIN ST STE 25
PO BOX 519
CEDAR CITY UT 84721

RE: State v. Bozarth Jr.

Appellate Case No. 20101040

Dear Mr. JACKSON:

On August 11, 2011, the court received the enclosed papers directly from your client. As counsel of record, we are forwarding the papers to you for action as you deem necessary. My letter advising your client that the papers were forwarded to you is also enclosed. We trust that you will address the concerns of your client. **Please also advise your client that all papers filed in the appeal must be filed by counsel of record.**

Sincerely,

A handwritten signature in black ink, appearing to read "Crystal Cragun", is written over a horizontal line.

Crystal Cragun
Judicial Assistant

cc: EDDIE R. BOZARTH JR.
LAURA B DUPAIX

STATE OF UTAH
OFFICE OF THE ATTORNEY GENERAL



FILED
UTAH APPELLATE COURTS

APR - 6 2012

MARK L. SHURTLEFF
ATTORNEY GENERAL

JOHN E. SWALLOW
Chief Deputy

Protecting Utah • Protecting You

KIRK TORGENSEN
Chief Deputy

April 5, 2012

Lisa Collins
Clerk of the Court
UTAH COURT OF APPEALS
450 South State Street
Post Office Box 140230
Salt Lake City, Utah 84114-0230

Re: *State v. Eddie Ray Bozarth, Jr.*,
Case No. 20101040-CA

Dear Ms. Collins:

In this case, defense counsel has filed a brief pursuant to *Anders v. California*, 386 U.S. 783 (1967). "Because of the special nature of the *Anders* brief, the attorney general [is not] expected to file a responsive brief," *State v. Clayton*, 639 P.2d 168, 170 (Utah 1981), and does not elect to do so here.

Very truly yours,

LAURA B. DUPAIX
Chief, Criminal Appeals Division
lauradupaix@utah.gov

LBD:ln

Copy: J. Bryan Jackson, Counsel for Appellant
Scott F. Garrett, Iron County Attorney